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THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1997 CUMULATIVE SUPPLEMENT

Volume 15

Chapters 106 through 112

Prepared under the supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 486 S.E.2d 626. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

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Preface

This Cumulative Supplement to Volume 15 contains the general laws of a permanent nature enacted by the General Assembly through the 1997 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

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Permanent portions of the General Laws enacted by the General Assembly through the 1997 Regular Session affecting Chapters 106 through 112 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 344, p. 732.
North Carolina Court of Appeals Reports through Volume 123, p. 790.
South Eastern Reporter 2nd Series through Volume 486, p. 626.
Federal Reporter 3rd Series through Volume 116, p. 875.
Federal Supplement through Volume 965, p. 1486.
Federal Rules Decisions through Volume 172, p. 600.
Bankruptcy Reports through Volume 209, p. 549.
Supreme Court Reporter through Volume 117, p. 1864.
North Carolina Law Review through Volume 75, p. 1088.
Wake Forest Law Review through Volume 32, p. 217.
Campbell Law Review through Volume 18, p. 201.
Duke Law Journal through Volume 45, p. 1088.
North Carolina Central Law Journal through Volume 25, p. 100.
Opinions of the Attorney General.

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ARTICLE 1.

Department of Agriculture and Consumer Services.

Part 1. Board of Agriculture.

§ 106-2. Department of Agriculture and Consumer Services established; Board of Agriculture, membership, terms of office, etc.

The Department of Agriculture and Consumer Services is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of 10 other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C.S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174; 1995, c. 509, s. 53; 1997-261, ss. 15, 16.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in the Article heading, in the section catchline, and near the beginning of the section.

§ 106-5: Repealed by Session Laws 1997-74, s. 1, effective May 22, 1997.

§ 106-6.1. Fees not to exceed actual cost.

Fees or charges established by any board or commission within the Department of Agriculture and Consumer Services for services rendered or for duties performed shall not exceed the actual cost to the Department of rendering such service or performing such duty. As used herein, "cost" shall mean expenses incurred for mileage, subsistence, postage, computer time, salaries, materials, supplies, or other similar expenses which are incurred as a direct result of rendering the service or performing the duty. As used herein, "cost" shall not include fixed overhead expenses such as buildings, equipment, machinery, or other similar expenses which are indirectly related to a particular service or duty. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services. (1981, c. 495, s. 10; 1987, c. 827, s. 25; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-9: Repealed by Session Laws 1997-74, s. 2, effective May 22, 1997.

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance.

(a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture and Consumer Services under the provisions of this Chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this Chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain, determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this Article. (1963, c. 458; 1993, c. 539, s. 736; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted “Department of Agriculture and Consumer Services” for “Department of Agriculture”.

§ 106-9.4. Collection of delinquent fees and taxes.

(a) If any fee or tax imposed by this Chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture and Consumer Services, or any portion of such fee or tax, be not paid within 30 days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than 60 days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this Chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this Chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known;
(2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within 10 days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within 10 days after service of said notice, shall send two copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within 10 days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within 10 days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this Article, as now or hereinafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within 12 months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by G.S. 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Part 2. Commissioner of Agriculture.

§§ 106-12, 106-13: Repealed by Session Laws 1997-74, ss. 3 and 4, effective May 22, 1997.

Part 3. Powers and Duties of Department and Board.

§§ 106-15 through 106-19: Repealed by Session Laws 1997-74, s. 5, effective May 22, 1997.

§ 106-21: Repealed by Session Laws 1997-74, s. 7, effective May 22, 1997.

§ 106-21.1. Feed Advisory Service; fee.

The Department of Agriculture and Consumer Services shall operate a Feed Advisory Service for the analysis of animal feeds in order to provide a feeding management service to all animal producers in North Carolina. A fee of ten dollars ($10.00) shall accompany each feed sample sent to the Department for testing. A fee of seventy-five dollars ($75.00) shall accompany each feed sample which is to be tested for the presence of fumonisin. (1979, c. 1026; 1989, c. 544, s. 9; 1991, c. 649, s. 1; 1997-261, s. 21.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "shall operate a".

§ 106-21.2. Food Bank information and referral service.

The Department of Agriculture and Consumer Services may maintain an information and referral service for persons and organizations that have notified the department of their desire to donate food to a nonprofit organization or a nonprofit corporation. (1979, 2nd Sess., c. 1188, s. 2; 1997-261, s. 22.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "may maintain an".

§ 106-22.1. State farms.

State-owned farmland, including timberland, allocated to the Department of Agriculture and Consumer Services for the State Farm Program, shall be managed by the Department for research, teaching, and demonstration in agriculture, forestry, and aquaculture. Research projects on the State farms shall be approved by the Department. The Department may sell surplus commodities produced on the farms. (1989, c. 500, s. 107(c); 1997-261, s. 23.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "for the State".

§ 106-22.2. Museum of Natural Sciences; Maritime Museum; disposition of objects.

Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other law pertaining to surplus State property, the Department of Agriculture and Consumer Services may sell or exchange any object from the collections of the Museum of Natural Sciences and the Maritime Museum when it would be in the best interests of the Museums to do so. Sales or exchanges shall be conducted in accordance with generally accepted practices for accredited museums. If an object is sold, the net proceeds of the sale shall be deposited in the State treasury to the credit of a special fund to be used for the improvement of the Museums' collections or exhibits. (1991 (Reg. Sess., 1992), c. 900, s. 175; 1997-261, s. 24.)

Editor's Note. — Session Laws 1997-443, s. 14.2, effective July 1, 1997, provides for the transfer of the North Carolina Maritime Museum and associated funds, resources, and personnel from the Department of Agriculture and Consumer Services to the Department of Cultural Resources.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "may sell or".

§ 106-22.4. Llamas as livestock.

Any rules adopted by the Board of Agriculture that affect llamas shall not refer to llamas as exotic or wild animals. It is the intent of the General Assembly that llamas be treated as domesticated livestock in order to promote the development and improvement of the llama industry in the State. This section does not prohibit the Board of Agriculture from classifying llamas for animal health purposes in accordance with generally accepted standards of veterinary medicine. For purposes of the section, "llama" means a South American camelid that is an animal of the genus llama. Llama includes llamas, alpacas, and guanacos. Llama does not include vicunas. (1997-84, s. 3.)

Editor's Note. — Session Laws 1997-84, s. 3 was codified as this section at the direction of the Revisor of Statutes.

Session Laws 1997-84, s. 4, makes this section effective May 22, 1997, and applicable to rules adopted or amended on or after that date.

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ 106-24. Collection and publication of information relating to agriculture; cooperation.

The Department of Agriculture and Consumer Services shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The Department is authorized to use sample surveys to collect primary data relating to agriculture. The Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of this Part. (1921, c. 201, s. 1; C.S., s. 4689(a); 1941, c. 343; 1975, c. 611, s. 1; 1979, c. 228, s. 1; 1997-261, s. 25.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "shall collect, compile".

§ 106-24.1. Confidentiality of information collected and published.

All information published by the Department of Agriculture and Consumer Services pursuant to this Part shall be classified so as to prevent the identification of information received from individual farm operators. All information received pursuant to this Part from individual farm operators shall be held confidential by the Department and its employees. Information collected by the Department from individual farm operators for the purposes of its animal health programs may be disclosed by the State Veterinarian when, in his judgment, the disclosure will assist in the implementation of these programs. (1979, c. 228, s. 3; 1993, c. 5, s. 1; 1997-261, s. 26.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "pursuant to this".

ARTICLE 4C.

Structural Pest Control Act.

§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; Structural Pest Control Committee created; appointment; terms; quorum.

There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the Division whose duties and authority shall be determined by the Commissioner. The Director shall act as secretary to the Structural Pest Control Committee created in this section.

There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company. The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

The Committee shall make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.

Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Four members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee. (1955, c. 1017; 1057, c. 1243, s. 1; 1967, c. 1184, s. 1; 1969, c. 541, s. 7; 1973, c. 556, s. 1; 1975, c. 570, ss. 1, 2; 1977, c. 231, s. 2; 1987, c. 827, s. 26; 1989, c. 238; c. 727, s. 219(30); 1997-261, s. 27; 1997-443, s. 11A.40.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 27, effective July 1, 1997, inserted "and Consumer Services" in the section catchline; substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in the first and second paragraphs; and in the second paragraph inserted "and Consumer Services" preceding "to serve on", and deleted the last sentence, which read "A member of the Committee appointed by the Governor shall not succeed himself".

Session Laws 1997-443, s. 11A.40, effective August 28, 1997, substituted "Secretary of Health and Human Services" for "Secretary of Environment, Health, and Natural Resources" and "Department of Health and Human Services" for "Department of Environment, Health, and Natural Resources" in the second paragraph, and made stylistic changes.

§ 106-65.24. Definitions.

For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:

(1) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(1a) "Applicant for a certified applicator's identification card" means any person making application to use restricted use pesticides in any phase of structural pest control.

(2) "Applicant for a license" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) "Attractants" means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

(3a) Repealed by Session Laws 1989, c. 725.

(3b) "Call office" means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.

(4) "Certified applicator" means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(5) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(6) "Committee" means the Structural Pest Control Committee.

(6a) "Deviation" means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.

(7) "Device" means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) Repealed by Session Laws 1975, c. 570, s. 4.

(8a) "Director" means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.

(9) "Employee" means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(9a) "Enforcement agency" means the Structural Pest Control Division of the Department of Agriculture and Consumer Services.

(10) "Fumigants" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) "Fungi" means wood-decaying fungi.

(11a) "Home office" means the licensee's principal place of business.

(12) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously

segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(14a) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.

(15) "Licensee" means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(16) "Person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(17) "Pest" means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.

(18) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(19) "Registered pesticide" means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.

(19a) "Registered technician" means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.

(20) "Repellents" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(21) "Restricted use pesticide" means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.

(22) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(23) "Structural pest control" means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(24) "Under the direct supervision of a certified applicator" means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied. (1955, c. 1017; 1957, c. 1243, s. 2; 1967, c. 1184, ss. 2, 3; 1973, c. 556, s. 2; 1975, c. 570, ss. 3, 4; 1977, c. 231, ss. 3-5; 1989, c. 725, s. 1; 1997-261, ss. 28, 29.)

Effect of Amendments. — Session Laws 1997-261, ss. 28 and 29, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivisions (8a) and (9a).

§ 106-65.38. Disposition of fees and charges.

All fees and charges received by the Division under this Article shall be deposited in the Department of Agriculture and Consumer Services General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1977, c. 231, s. 12; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Article 4D.

North Carolina Biological Organism Act.

§ 106-65.44. Definitions.

For the purposes of this Article, unless the context clearly requires otherwise:

(1) The term "biological organism" means any plant, lower animal, virus or disease causal agent intended for release into the environment; or, an organism which affects the environment by its presence or absence.

(2) The term "Board" means North Carolina Board of Agriculture.

(3) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.

(4) The term "Division of Entomology" means the Division of the Department of Agriculture and Consumer Services. (1973, c. 713, s. 3; 1997-261, s. 30.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "and Consumer Services" for "so named" at the end of subdivision (4).

§ 106-65.46. Commissioner of Agriculture to enforce Article; further authority of Board.

It shall be the duty of the Commissioner to exercise the powers and duties imposed upon him by this Article and such regulations as shall be adopted under these provisions for the purpose of protecting the environment from adverse effects of biological organisms released into the environment of North Carolina and to protect beneficial biological organisms in the State. The Board is hereby authorized to cause importation, collection, release, destruction and propagation of beneficial organisms when such action is deemed to be in the best interest of North Carolina and its environment. The Board is authorized to promote and/or regulate businesses, persons or agencies engaged in the importation, collection, rearing, sales, release, or use of biological organisms. The Board is authorized to establish standards of positive identification, purity of culture or colony, freedom from disease and hyperparasites of biological organisms and to establish standards of competence and responsibility for the private practitioner engaged in the propagation, use, distribution, release or sale of biological organisms.

The Commissioner is hereby authorized to cause or cooperate in management or mitigation programs to be conducted against such plant, environmental, or nuisance pests as can be controlled in an economically, ecologically, and biologically sound manner. The Board is authorized to cause use of pesticides, parasites, predators, pheromones, genetic material, and other control techniques which are consistent with the pesticide, environmental and other laws applicable in the State of North Carolina.

The Commissioner shall have authority to designate such employees of the North Carolina Department of Agriculture and Consumer Services and/or to enter into cooperative agreements with other governmental agencies as may be needed to carry out the duties and exercise the powers provided by this Article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner as agents for the purpose of this Article. (1973, c. 713, s. 5; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 4E.

Pest Control Compact.

§ 106-65.57. Filing of bylaws and amendments.

Pursuant to Article IV(h) of the Compact, copies of bylaws and amendments thereto shall be filed with the Department of Agriculture and Consumer Services. (1975, c. 810, s. 3; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 4F.

Uniform Boll Weevil Eradication Act.

§ 106-65.69. Definitions.

As used in this Article, the following words shall have the meaning stated below, unless the context requires otherwise:

(1) Boll Weevil. — Anthonomus grandis Boheman, the boll weevil, in any stage of development.

(2) Certificate. — A document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with boll weevils.

(3) Commissioner. — The Commissioner of Agriculture of this State or any officer or employee of the Department of Agriculture and Consumer Services or designated cooperator to whom authority to act in his stead has been or hereafter may be delegated.

(4) Cotton. — Any cotton plant or cotton plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(5) Host. — Any plant or plant product upon which the boll weevil is dependent for completion of any portion of its life cycle.

(6) Infested. — Actually infested with a boll weevil or so exposed to infestation that it would be reasonable to believe that an infestation exists.

(7) Permit. — A document issued or authorized by the Commissioner to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

(8) Person. — Any individual, corporation, company, society, or association, or other business entity.

(9) Regulated Article. — Any article of any character carrying or capable of carrying the boll weevil, including, but not limited to cotton plants, seed cotton, other hosts, gin trash, and mechanical cotton pickers, as designated by regulations of the Commissioner. (1975, c. 958, s. 3; 1997-261, s. 31.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subdivision (3) deleted "the Department of" preceding "Agriculture of this", and substituted "the Department of Agriculture and Consumer Services" for "said Department" preceding "or designated cooperator".

ARTICLE 4G.

Official Cotton Growers' Organization.

§ 106-65.85. Definitions.

As used in this Article:

(1) "Board" means the North Carolina Board of Agriculture.

(2) "Commissioner" means the Commissioner of Agriculture of the State of North Carolina.

(3) "Cotton grower" means any person who is engaged in and has an economic risk in the business of producing or causing to be produced, for market, cotton.

(4) "Department" means the North Carolina Department of Agriculture and Consumer Services. (1983, c. 136, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-65.90. Failure to pay assessments.

(a) A cotton grower who fails to pay, when due and upon reasonable notice, any assessment levied under this Article, shall be subject to a penalty of not more than twenty-five dollars ($25.00) per acre, as established in the Board's regulations.

(b) A cotton grower who fails to pay all assessments, including penalties, within 30 days of notice of penalty, shall destroy any cotton plants growing on his acreage which is subject to the assessment. Any such cotton plants which are not destroyed shall be deemed to be a public nuisance. The Commissioner may apply to a court of competent jurisdiction to abate and prevent such nuisance. Upon judgment and order of the court, such nuisance shall be condemned and destroyed in the manner directed by the court. The grower shall be liable for all court costs and fees, and other proper expenses incurred in the enforcement of this section.

(c) In addition to any other remedies for the collection of assessments, including penalties, the Department of Agriculture and Consumer Services has a lien upon cotton subject to such assessments. Provided, that any buyer of cotton shall take free of such lien if he has not received written notice of the lien from the Department or if he has paid for such cotton by a check in which the Department is named as joint payee. In any action to enforce the lien, the burden shall be upon the Department to prove that the buyer of cotton received written notice of the lien. A buyer of cotton other than a person buying cotton from the grower takes free of the lien created herein. (1983, c. 136, s. 7; 1987, c. 293; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 8A.

Sale of Agricultural Liming Materials and Landplaster.

§ 106-92.8. Tonnage fees: reporting system.

For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this Article, each manufacturer or registrant shall pay to the Department of Agriculture and Consumer Services tonnage fees in addition to registration fees as follows: for agricultural liming material, ten cents (10¢) per ton; for landplaster, ten cents (10¢) per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose for use in the manufacture of fertilizer or to materials when sold in packages of 10 pounds or less.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this Article in this State shall make application for a permit to report the materials sold and pay the tonnage fees as set forth in this section.

The Commissioner of Agriculture shall grant such permits on the following conditions: The applicant's agreement that he will keep such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and his agreement for the Commissioner or this authorized representative to examine such records to verify the tonnage statement. The registrant shall report quarterly and pay the applicable tonnage fees quarterly, on or before the tenth day of October, January, April, and July of each year. The report and payment shall cover the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the last day of the month in which it is due, or if the report be false, the amount due shall bear a penalty of ten percent (10%) which shall be added to the tonnage fees due. If the report is not filed and the tonnage fees paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit and cancel the registration. (1979, c. 590; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-92.11. Deficiencies: refunds to consumer.

Should any of the agricultural liming and landplaster materials defined in this Article be found to be deficient in the components claimed by the manufacturer or registrant thereof, said manufacturer or registrant, upon official notification to [of] such deficiency by the Commissioner of Agriculture, shall, within 90 days, make refunds to the consumers of the deficient materials as follows:

In case of "agricultural liming material" if the deficiency is five percent (5%) of the guarantee or more, there shall be refunded an amount equal to three times the value of such deficiency and in case of "landplaster," for deficiencies in excess of one percent (1%) of the guarantee, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture, where said refund shall be held for payment to the proper consumer upon order of the Commissioner. If the consumer to whom the refund is due cannot be found within a period of one year, such refund shall revert to the Department of Agriculture and Consumer Services for expenditure by the Commissioner in promoting the agricultural programs of the State. (1979, c. 590; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 12.

Food, Drugs and Cosmetics.

§ 106-121. Definitions and general consideration.

For the purpose of this Article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(1a) The term "color" includes black, white, and intermediate grays.

(1b) The term "color additive" means a material which:

  a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

  b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;

Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture and Consumer Services, and the term "Board" means the Board of Agriculture.

(2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:

a. Any tobacco or tobacco product; or

b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or

c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or

d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means

a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and

b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(4a) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.

(5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended

a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
b. To affect the structure or any function of the body of man or other animals.

(6) The term "drug" means
a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means
a. Articles used for food or drink for man or other animals,
b. Chewing gum, and
c. Articles used for components of any such article.

(8a) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:
a. A pesticide chemical in or on a raw agricultural commodity; or
b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
c. A color additive; or
d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).

(9) The term "immediate container" does not include package liners.

(10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(11) The term "labeling" means all labels and other written, printed, or graphic matter

a. Upon an article or any of its containers or wrappers, or

b. Accompanying such article.

(11a) Repealed by Session Laws 1989, c. 226, s. 1.

(12) The term "new drug" means

a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(12a) Repealed by Session Laws 1989, c. 226, s. 1.

(13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.

(13a) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(14) The term "person" includes individual, partnership, corporation, and association.

(14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.

(14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.

(14c) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(14d) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(14e), (14f) Repealed by Session Laws 1989, c. 226, s. 1.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2; 1975, c. 614, ss. 1, 2; 1987, c. 737, s. 1; 1989, c. 226, s. 1; 1997-261, s. 32.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" preceding "and the term" in subdivision (2).

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.

(a) Whenever a duly authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe, that any food, drug, device, cosmetic or consumer commodity is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this Article or is in violation of G.S. 106-131 or 106-135 of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded or to be in violation of G.S. 106-131 or 106-135 of this Article, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Sevices. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture and Consumer Services that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture and Consumer Services shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6; 1973, c. 108, s. 53; 1975, c. 614, ss. 7-9; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" throughout the section.

§ 106-134. Drugs deemed misbranded.

A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article.

(2) If in package form unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by G.S. 106-121(2a)c of this Article; provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming."

(5)a. If it is a drug, unless:

1. Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula),

I. The established name (as defined in paragraph b of this subdivision) of the drug, if such there be, and

II. In case it is fabricated from two or more ingredients the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs; and

2. For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of 1 II or 2 of this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the Board.

b. As used in this subdivision (5), the term "established name," with respect to a drug or ingredient thereof, means:

1. The applicable official name designated pursuant to section 508 of the federal act, or
2. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof, in such compendium, or
3. If neither 1 nor 2 of this paragraph applies, then the common or usual name, if any, of such drug or of such ingredient:

Provided further, that where 2 of this sub-subdivision applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.

(6) Unless its labeling bears

a. Adequate directions for use; and

b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to

the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9)a. If it is a drug and its container is so made, formed, or filled as to be misleading; or

b. If it is an imitation of another drug; or

c. If it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11), (12) Repealed by Session Laws 1975, c. 614, s. 28.

(13) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act, and

b. Such certificate or release is in effect with respect to such drug.

(14) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless

a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act, and

b. Such certificate or release is in effect with respect to such drug:

Provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive,

prescribed under the provisions of G.S. 106-132 of this Article.

(16) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of

a. The established name, as defined in G.S. 106-134(5)b of this Article, printed prominently and in type at least half as large as that used for any trade or brand name thereof,

b. The formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act, and

c. Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.

(17) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(18) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970. (1939, c. 320, s. 15; 1949, c. 370; 1973, c. 831, s. 1; 1975, c. 614, ss. 25-28, 30; 1997-261, s. 33.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "and Consumer Services" preceding "to be a" in subdivision (8).

§ 106-138. False advertising.

(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture and Consumer Services determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-140.1. Registration of producers of prescription drugs and devices.

(a) On or before December 31 of each year, every person doing business in North Carolina and operating as a wholesaler, manufacturer, or repackager, as those terms are defined in subsection (j) of this section, shall register with the Commissioner his name and business location(s) in North Carolina. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(b) Every person, upon first operating as a wholesaler, manufacturer or repackager in North Carolina shall immediately register with the Commissioner his name, place of business, and such establishment. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(c) Every person duly registered in accordance with subsections (a) and (b) of this section shall register with the Commissioner any additional establishment that he owns or operates in the State of North Carolina prior to doing business as a manufacturer, wholesaler or repackager.

(d) The Commissioner may assign a registration number to any person or any establishment registered in accordance with this section.

(e) The Commissioner shall make available for inspection to any person so requesting any registration filed pursuant to this section.

(f) The following classes of people are exempt from the registration requirements of this section:

(1) Pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in G.S. 90-85.3(m);

(2) Practitioners licensed or registered by law to prescribe or administer drugs and who manufacture, prepare, compound, or process drugs or devices solely for use in the course of their professional practice.

(3) Persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale.

(4) Other classes of persons the Commissioner may by rule exempt from the application of this section upon a finding that registration by these classes of persons in accordance with this section is not necessary for the protection of the public health.

(5) Wholesale distributors of prescription drugs licensed under G.S. 106-145.3.

(g) Every establishment in the State of North Carolina registered with the Commissioner pursuant to this section shall be subject to inspection pursuant to G.S. 106-140.

(h) The Commissioner shall adopt rules to implement the registration requirements of this section. These rules may provide for an annual registration fee of up to five hundred dollars ($500.00) for companies operating as manufacturers, wholesalers, or repackagers. The Department of Agriculture and Consumer Services shall use these funds for the implementation of the North Carolina Food, Drug and Cosmetic Act.

(i) For the purposes of this act, name means the name of the partnership if a partnership and the name of the corporation if a corporation.

(j) As used in this section:

(1) The term "manufacturer" means a person who prepares, derives, or produces a prescription drug. Pharmacists are specifically excluded from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(2) The term "prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription."

(3) The term "repackager" means a person who repacks, relabels, or manipulates a prescription drug which was in a unit packaged and sealed by a manufacturer. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

(4) The term "wholesaler" means a person acting as a jobber, wholesale merchant, salvager, or broker, or agent thereof, who sells or distributes for resale a prescription drug. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it. (1987, c. 737, s. 2; 1989, c. 226, s. 2; 1989 (Reg. Sess., 1990), c. 1024, s. 20; 1991, c. 699, ss. 3, 4; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-141. Examinations and investigations.

(a) Repealed by Session Laws 1975, c. 614, s. 39.

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this Article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture and Consumer Services the arrangements for such examinations and investigations shall be approved by the directing head of such agency.

(c) The Commissioner of Agriculture is authorized to delegate embargo authority concerning food and drink pursuant to G.S. 106-125 to the Secretary of Health and Human Services and to local health directors. (1939, c. 320, s. 22; 1975, c. 614, s. 39; 1983, c. 891, s. 12; 1997-261, s. 109; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s.109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 106-141.1. Inspections of donated food.

(a) The Department of Agriculture and Consumer Services is authorized to inspect for compliance with the provisions of Article 12 of Chapter 106 of the North Carolina General Statutes, food items donated for use or distribution by nonprofit organizations or nonprofit corporations, and may establish procedures for the handling of the food items, including reporting procedures concerning the donation of food.

(b) The Department of Agriculture and Consumer Services may apply to Superior Court for injunctive relief restraining the violation of this section.

(c) Nothing in this section shall limit the duties or responsibilities of the Commission for Health Services or the local boards of health. (1979, 2nd Sess., c. 1188, s. 3; 1997-261, s. 34.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "and Consumer Services" following "The Department of Agriculture" at the beginning of both subsections (a) and (b).

§ 106-143. Article construed supplementary.

Nothing in this Article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the Commission for Health Services or the Department of Environment and Natural Resources or any local health department in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, finfish, or other foods, or food products, or the production, handling, or processing of these items. (1939, c. 320, s. 24½; 1973, c. 476, s. 128; 1975, c. 19, s. 31; 1997-443, s. 11A.41.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Department of Health and Human Services" for "Department of Environment, Health, and Natural Resources" and "of these items" for "thereof; but this Article shall be construed to be in addition thereto".

ARTICLE 12A.

Wholesale Prescription Drug Distributors.

§ 106-145.2. Definitions.

The following definitions apply in this Article:

(1) Blood. — Whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(2) Blood component. — That part of blood separated by physical or mechanical means.

(3) Commissioner. — The Commissioner of Agriculture.

(4) Common control. — The power to direct or cause the direction of the management and policies of a person, whether by ownership of stock, by voting rights, by contract, or otherwise.

(5) Department. — The Department of Agriculture and Consumer Services.

(6) Drug sample. — A unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(7) Manufacturer. — A person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.

(8) Person. — An individual, a corporation, a partnership, or any other entity.

(9) Prescription drug. — A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b).

(10) Wholesale distribution. — Distribution of a prescription drug to a person who is not a consumer or patient, other than any of the following types of distributions:

   a. Intracompany sales. An intracompany sale is a transaction or transfer between any divisions, subsidiary and parent companies, or affiliated companies under common control of the same corporate entity.

   b. The purchase or other acquisition of a prescription drug by a hospital or other health care entity that is a member of a group purchasing organization for its own use from the group purchasing organization or from other hospitals or other health care entities that are members of these organizations.

   c. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law.

   d. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control.

   e. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons. Emergency medical reasons include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage when the gross dollar value of the transfers does not exceed five percent (5%) of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12-consecutive-month period.

f. The sale, purchase, or trade of a prescription drug; an offer to sell, purchase, or trade a prescription drug; or the dispensing of a prescription drug pursuant to a prescription.

g. The distribution of drug samples by a representative of a manufacturer or a wholesale distributor.

h. The sale, purchase, or trade of blood and blood components intended for transfusion.

(11) Wholesale distributor. — A person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs commingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse. (1991, c. 699, s. 2; 1997-261, s. 35.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (5).

Article 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

§ 106-168.3. Exemptions.

Nothing in this Article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture and Consumer Services as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-168.5. Duties of Commissioner upon receipt of application; inspection committee.

Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture and Consumer Services, one member who shall be designated by the Secretary of Health and Human Services and who shall be an employee of the Department of Health and Human Services, and one member who shall be designated by the director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13; 1973, c. 476, s. 128; 1989, c. 727, s. 219(31); 1997-261, s. 109; 1997-443, s. 11A.42.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Session Laws 1997-443, s. 11A.42, effective August 28, 1997, substituted "Secretary of Health and Human Services" for "Secretary of Environment, Health, and Natural Resources" and "Department of Health and Human Services" for "Department of Environment, Health, and Natural Resources".

Article 15.

Inspection of Meat and Meat Products by Counties and Cities.

§§ 106-169 through 106-173: Repealed by Session Laws 1997-74, s. 8, effective May 22, 1997.

Article 17.

Marketing and Branding Farm Products.

§ 106-185. Scope of Article; federal-State cooperation.

(a) Scope. — This Article gives the Department of Agriculture and Consumer Services the authority to investigate marketing conditions for and establish and maintain standard grades, packages, and State brands for farm products. As used in this Article, the term "farm products" means farm crops, horticultural crops, and animal products.

(b) Cooperation. — The Commissioner of Agriculture may enter into agreements with the United States Department of Agriculture that require State and federal cooperation in performing the duties imposed by this Article. (1919, c. 325, s. 1; C.S., s. 4781; 1921, c. 140; 1993, c. 223, s. 1; 1997-261, s. 36.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "and Consumer Services" preceding "the authority to" in subsection (a).

§ 106-194.1. Farm Product Inspection Account.

The Farm Product Inspection Account is established as a nonreverting account within the Department of Agriculture and Consumer Services. Interest and other investment income earned by the Account shall be credited to it.

Fees collected under this Article shall be credited to the Account and applied to the costs of administering this Article. Fees credited to the Account from grading and inspection services provided under a cooperative agreement with the United States Department of Agriculture are subject to any restrictions on use set out in the cooperative agreement. (1993, c. 223, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 18.

Shipper's Name on Receptacles.

§ 106-197: Repealed by Session Laws 1997-74, s. 9, effective May 22, 1997.

ARTICLE 19B.

Plant Protection and Conservation Act.

§ 106-202.14. Creation of Board; membership; terms; chairman; quorum; board actions; compensation.

(a) The North Carolina Plant Conservation Board is created within the Department of Agriculture and Consumer Services.

(b) The Board shall consist of seven members who are residents of North Carolina, one of whom represents each of the following:

(1) The North Carolina Botanical Garden of The University of North Carolina at Chapel Hill;
(2) The botanical, scientific community in North Carolina;
(3) The Division of Forest Resources, Department of Environment and Natural Resources;
(4) A North Carolina citizens conservation organization;
(5) The commercial plant production industry in North Carolina;
(6) The Department of Agriculture and Consumer Services;

(7) The North Carolina public at large.

The Governor shall appoint the first four members enumerated above; the Commissioner shall appoint the remaining three members.

(c) Initial appointments to the Board shall be made by October 1, 1979. Of the terms of initial appointees, the representatives of the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the commercial plant production industry in North Carolina, and a North Carolina citizens conservation organization shall serve two-year terms; all other members shall serve four-year terms. All subsequent terms shall be for four-year terms.

(d) All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled for the remainder of the unexpired term. The Commissioner may at any time remove any member from the Board for cause. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the proper credentials for that vacancy and appointed by the proper appointing agency.

(e) The Board shall select its chairman from its own membership to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select other officers as it deems necessary.

(f) Any action of the Board shall require at least four concurring votes.

(g) Members of the Board who are not State employees shall receive per diem, subsistence and travel allowances authorized by G.S. 138-5; members who are State employees shall receive the subsistence and travel allowances authorized by G.S. 138-6; and members who are also members of the General Assembly shall receive subsistence and travel allowances authorized by G.S. 120-3.1. (1979, c. 964, s. 1; 1989, c. 727, s. 218(45); 1997-261, ss. 37, 38; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, ss. 37 and 38, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (a) and in subdivision (b)(6).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 106-202.15. Powers and duties of the Board.

The Board shall have the following powers and duties:

(1) To adopt and publish by July 1, 1980, an endangered species list, a threatened species list and a list of species of special concern, as provided for in G.S. 106-202.16, identifying each entry by the common name and scientific name and cross-referencing by family, genus, and species number as found in the current edition of "The Manual of the Vascular Flora of the Carolinas," or if not found in this edition, as identified by the American Society of Plant Taxonomists;

(2) To reconsider and revise the lists from time to time in response to public proposals and as the Board deems necessary;
(3) To conserve and to regulate the collection and shipment of those plant species or higher taxa that are of such similarity to endangered and threatened species that they cannot be easily or readily distinguished from an endangered or threatened species;
(4) To regulate within the State any exotic species, in the same manner as a resident species if the exotic species is on the Federal Endangered and Threatened Species List or it is listed in the Appendices to the International Treaty to Conserve Endangered and Threatened Species;
(5) To determine that certain plant species growing in North Carolina, whether or not they are on the endangered or threatened species list, are of special concern and to limit, regulate or forbid sale or collection of these plants;
(6) To conduct investigations to determine whether a plant should be on the protected plant lists and the requirements for survival of resident species of plants;
(7) To adopt regulations to protect, conserve and enhance resident and exotic species of plants on the lists, or to otherwise affect the intent of this Article;
(8) To develop, establish and coordinate conservation programs for endangered species and threatened species of plants, consistent with the policies of the Endangered Species Act, including the acquisition of rights to land or aquatic habitats;
(9) To enter into and administer cooperative agreements through the Commissioner of Agriculture, in concert with the North Carolina Botanical Garden and other agencies, with the U.S. Department of Interior or other federal, State or private organizations concerning endangered and threatened species of plants and their conservation and management;
(10) To cooperate or enter into formal agreements with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article;
(11) Through the Commissioner, to receive funds, donations, grants or other moneys, issue grants, enter contracts, employ personnel and purchase supplies and materials necessary to fulfill its duties;
(12) To promulgate regulations under which the Department of Agriculture and Consumer Services may issue permits to licensed nurserymen, commercial growers, scientific supply houses and botanical gardens for the sale or distribution of plants on the protected list provided that the plants are nursery propagated and grown horticulturally from seeds or by vegetative propagation of cuttings, meristems or other similar materials and that the plants bear the grower's permit number.
(13) To stop the sale of or to seize any endangered, threatened, or special concern plant species, or part thereof possessed, transported, or moved within this State or brought into this State from any place outside the State if such is found by

the Board or its duly authorized agent to be in violation of this Article or rules adopted pursuant to this Article. Such plants shall be moved or disposed of at the direction of the Board or its agent or by court order. (1979, c. 964, s. 1; 1989, c. 508, s. 1; 1997-261, s. 39.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "and Consumer Services" preceding "may issue permits" in subdivision (12).

§ 106-202.16. Criteria and procedures for placing plants on protected plant lists.

(a) All native or resident plants which are on the current federal lists of endangered or threatened plants pursuant to the Endangered Species Act have the same status on the North Carolina Protected Plants lists.

(b) The Board, the Scientific Committee, or any resident of North Carolina may propose to the Department of Agriculture and Consumer Services that a plant be added to or removed from a protected plant list.

(c) If the Board, with the advice of the Scientific Committee, finds that there is any substance to the proposal, it shall publish notice of the proposal in a Department of Agriculture and Consumer Services news release.

(d) The Board shall collect relevant scientific and economic data, concerning any substantial proposal, necessary to determine:

(1) Whether or not any other State or federal agency or private entity is taking steps to protect the plant under consideration;
(2) The present or threatened destruction, modification or curtailment of its habitat;
(3) Over-utilization for commercial, scientific, educational or recreational purposes;
(4) Critical depletion from disease or predation;
(5) The inadequacy of existing regulatory mechanisms; or
(6) Other natural or man-made factors affecting its continued existence in North Carolina.

If the Board, with the advice of the Scientific Committee, finds that the plant should be added to or removed from a protected plant list the Board shall instigate rule-making procedures to add or remove the plant from the list.

(e), (f) Repealed by Session Laws 1987, c. 827, s. 31, effective August 13, 1987. (1979, c. 964, s. 1; 1987, c. 827, s. 31; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-202.17. Creation of committee; membership; terms; chairman; meetings; committee action; quorum; compensation.

(a) The North Carolina Plant Conservation Scientific Committee is created within the Department of Agriculture and Consumer Services.

(b) The Scientific Committee shall consist of the Directors of The University of North Carolina at Chapel Hill Herbarium, the North Carolina State University Herbarium, the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill, the North Carolina State Museum of Natural Sciences and the North Carolina Natural Heritage Program of the Department of Environment and Natural Resources or their designees, a representative of the North Carolina Association of Nurserymen, Inc., appointed by the Commissioner, and a representative of the Garden Club of North Carolina, Incorporated, the North Carolina Chapter of the Nature Conservancy or the North Carolina Wild Flower Preservation Society, Inc., appointed by the Commissioner. Members shall serve for three-year terms and may succeed themselves.

(c) The Board shall select a chairman of the Scientific Committee from the Scientific Committee's membership to serve for three years.

(d) The Scientific Committee may hold its meetings at the North Carolina Botanical Garden of The University of North Carolina at Chapel Hill.

(e) Any action of the Scientific Committee shall require at least four concurring votes.

(f) Members of the Scientific Committee who are not State employees may receive per diem, subsistence and travel allowances authorized by G.S. 138-5 if they so request; members who are State employees may receive the subsistence and travel allowances authorized by G.S. 138-6 if they so request; and members who are also members of the General Assembly may receive subsistence and travel allowances authorized by G.S. 120-3.1 if they so request. (1979, c. 964, s. 1; 1989, c. 727, s. 218(46); 1993, c. 561, s. 116(i); 1997-261, s. 109; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (a).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources" in subsection (b).

§ 106-202.19. Unlawful acts; penalties; enforcement.

(a) It is unlawful:

(1) To uproot, dig, take or otherwise disturb or remove for any purpose from the lands of another, any plant on a protected plant list without a written permit from the owner which is dated and valid for no more than 180 days and which indicates the species or higher taxon of plants for which permission is granted; except that the incidental distur-

bance of protected plants during agricultural, forestry or development operations is not illegal so long as the plants are not collected for sale or commercial use;

(2) To sell, barter, trade, exchange, export, offer for sale, barter, trade, exchange or export or give away for any purpose including advertising or other promotional purpose any plant on a protected plant list, except as authorized according to the rules and regulations of the Board;

(3) To violate any rule of the Board promulgated under this Article;

(4) To dig ginseng on another person's land, except for the purpose of replanting, between the first day of April and the first day of September;

(5) To buy ginseng outside of a buying season as provided by the Board without obtaining the required documents from the person selling the ginseng;

(6) To buy ginseng for the purpose of resale or trade without holding a currently valid permit as a ginseng dealer;

(7) To fail to keep records as required under this Article, to refuse to make records available for inspection by the Board or its agent, or to use forms other than those provided for the current year or harvest season by the Department of Agriculture and Consumer Services;

(8) To provide false information on any record or form required under this Article;

(9) To make false statements or provide false information in connection with any investigation conducted under this Article;

(10) To possess any protected plant, or part thereof, which was obtained in violation of this Article or any rule adopted hereunder; or

(11) To violate a stop sale order issued by the Board or its agent.

(a1) Any person convicted of violating this Article, or any rule of the Board adopted pursuant to this Article shall be guilty of a Class 3 misdemeanor, and for a first violation shall only be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); and upon a subsequent conviction shall only be fined not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000). Each illegal movement or distribution of a protected plant shall constitute a separate violation. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(a2) A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Board against any person guilty of violating this Article a second or subsequent time.

(b) The Commissioner or any employee of the Department of Agriculture and Consumer Services designated by the Commissioner to enforce the provisions of this Article, may enter any place within the State at all reasonable times where plant materials are being grown, transported or offered for sale and require the presentation for inspection of all pertinent papers and records relative to the provisions of this Article, after giving notice in writing to the owner or custodian of the premises to be entered. If he refuses to consent to the entry, the Commissioner may apply to any district court judge and the judge may order, without notice, that the owner or custodian of the place permit the Commissioner to enter the place for the purposes herein stated and failure by any person to obey the order may be punished as for contempt.

(c) The Commissioner of Agriculture is authorized to apply to the superior court for, and the court shall have jurisdiction upon hearing and, for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-202.19(a), regardless of whether there exists an adequate remedy at law. (1979, c. 964, s. 1; 1989, c. 508, s. 2; 1993, c. 539, s. 749; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, ss. 40, 41.)

Effect of Amendments. — Session Laws 1997-261, ss. 40 and 41, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (a)(7) and inserted "and Consumer Services" following "Department of Agriculture" in subsection (b).

§ 106-202.20. Forfeiture of illegally possessed plants; disposition of plants.

Upon conviction of any defendant for a violation of G.S. 106-202.19, the court, in its discretion, may order the defendant to forfeit any plant or plant parts which he possesses in violation of G.S. 106-202.19. The court shall direct disposition of any forfeited plant or plant part by destruction or sale. The proceeds from such a sale shall be paid to the North Carolina Department of Agriculture and Consumer Services for use in the enforcement of this Article. (1989, c. 508, s. 3; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 25A.

North Carolina Egg Law.

§ 106-245.14. Definitions.

The following words, terms, and phrases shall be construed for the purpose of this Article as follows:

(1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this Article.

(2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.

(3) "Commissioner" means the North Carolina Commissioner of Agriculture.

(4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.

(5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.

(6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this Article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.

(7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.

(8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.

(9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.

(10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.

(11) "Law" means the provisions of this Article and all rules and regulations issued hereunder.

(12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture and Consumer Services.

(13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this Article.

(14) "Packer" means any person that is engaged in grading, shell treating or packing eggs for sale to consumers, direct or through distribution outlets of stores.

(15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.

(16) "Retailer" means any person who markets eggs to consumers.

(17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.

(18) "Standards for quality" means specifications of the physical characteristics of any or all of the component parts or the individual egg. (1965, c. 1138, s. 1; 1997-261, s. 42.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (12).

§ 106-245.17. Stop-sale orders.

If an authorized representative of the North Carolina Department of Agriculture and Consumer Services shall determine, after inspection, that any lot of eggs is in violation of this Article, he may issue a "stop-sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop-sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 25B.

Egg Promotion Tax.

§ 106-245.31. Definitions.

As used in this Article:

(1) "Board" means the North Carolina Board of Agriculture.
(2) "Commissioner" means the Commissioner of Agriculture.
(3) "Department" means the North Carolina Department of Agriculture and Consumer Services. (1987, c. 815, s. 1; 1997-261, s. 43.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (3).

ARTICLE 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ 106-251. Department of Agriculture and Consumer Services to enforce law; examinations.

It shall be the duty of the Department of Agriculture and Consumer Services to enforce this Article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this Article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this Article shall be guilty of a violation of this Article. (1921, c. 169, s. 6; C.S., s. 7251(f); 1997-261, s. 44.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, added "and Consumer Services" following "Department of Agriculture" in the section catchline and the first sentence.

ARTICLE 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ 106-266.6. Definitions.

As used in this Article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

(1) "Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

(2) "Books and records" means books, records, accounts, contracts, memoranda, documents, papers, correspondence, or other data, pertaining to the business of the person in question.

(3) "Commission" means the North Carolina Milk Commission created by this Article.

(4) "Distributor" or "subdistributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells 25 gallons or less of milk per day which is produced on his own farm:

- a. Persons, irrespective of whether any such person is a producer:
  - 1. Who pasteurize or bottle milk or process milk into fluid milk;
  - 2. Who sell and/or market fluid milk at wholesale or retail:
    - I. To hotels, restaurants, stores or other establishments for consumption on the premises,
    - II. To stores or other establishments for resale, or
    - III. To consumers;
  - 3. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.
- b. Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

(5) "Health authorities" includes the Department of Health and Natural Resources, the Department of Environment and Natural Resources, the North Carolina Department of Agriculture and Consumer Services, the Commissioner of Agriculture, and the local health authorities.

(6) "Licensee" means a licensed milk distributor.

(7) "Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

(8) "Milk" means the lacteal secretion obtained by the milking of one or more cows and reconstituted milk products derived from the recombining of dry milk solids, evaporated

or condensed milk with water, and which is pasteurized, standardized or otherwise processed with a view of selling it as fluid milk in its several forms, whether cultured or with added bacteria or other ingredients, regardless of grade or fat content, including whole milk, lowfat milk, cream, chocolate milk, plain buttermilk, cream buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, liquid milk shake mix, half and half, eggnog, other milk-cream mixtures and the milk portion of any imitation milk. Said term excludes the lacteal secretion of one or more dairy cows where the secretion is to be sold for any other purpose.

(9) "Person" means any person, firm, corporation or association.

(10) "Producer" means any person, irrespective of whether such person is a member of a producer association or a distributor, who operates to produce milk for sale as fluid milk in the State.

(11) "Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State Sanitary Code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

(12) "Subdistributor" as distinguished from a "distributor" means one who does not process milk but purchases its milk from a licensed distributor for distribution.

(13) "Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1; 1971, c. 779, s. 1; 1973, c. 476, s. 128; 1977, c. 426, s. 1; 1989, c. 727, s. 219(32); 1997-261, s. 45; 1997-443, s. 11A.43.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 45, effective July 1, 1997, substituted "North Carolina Department of Agriculture and Consumer Services" for "State Department of Agriculture" following "Natural Resources, the" in subdivision (5).

Session Laws 1997-443, s. 11A.43, effective August 28, 1997, substituted "Department of Health and Human Services, the Department of Environment and Natural Resources" for "Department of Environment, Health, and Natural Resources" in subdivision (5).

§ 106-266.17. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.

The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this Article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this Article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this Article are hereby repealed to the extent necessary for the full operation of this Article. No provisions of this Article shall be deemed in conflict with Articles 28 and 28A of Chapter 106 of the General Statutes. No provisions of this Article shall be deemed in conflict with the authority granted to local boards of health by G.S. 130-19, 130-20, 130-66, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the Department of Health and Human Services by G.S. 130-3 to make sanitary inquiries and investigations. (1953, c. 1338, s. 14; 1971, c. 779, s. 1; 1973, c. 476, s. 128; 1997-443, s. 11A.118(a); 1997-502, s. 7.)

Editor's Note. —
Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".
Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Session Laws 1997-502, s. 7, effective January 1, 1998, and applicable to contracts and agreements entered into on or after that date, substituted "local" for "county, city-county and district" in the last sentence.

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ 106-267. Inspection, grading and testing dairy products; authority of State Board of Agriculture.

The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture and Consumer Services in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, to require processors of fortified milk and milk products to pay all costs for assays of vitamin-fortified products, to provide for the issuance of permits upon compliance with this Article and the rules and regulations promulgated thereunder and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1; 1981, c. 338; c. 495, s. 5; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-268. Definitions; enforcement of Article.

(a) The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in Article 12 of Chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this Article and section.

(b) The term "adulteration" means:

(1) Failure to meet definitions and standards as established by the Board of Agriculture.

(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(3) If any substance has been substituted wholly or in part thereof.

(4) If it is adjudged to be unfit for human consumption.

(c) The term "misbranded" means:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another dairy product or frozen dessert.

(3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

(d) The Department of Agriculture and Consumer Services, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this Article or of this section have been violated, or whenever a duly authorized agent of the Department has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this Article or section not in compliance with this Article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture and Consumer Services, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this Article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this Article or section. In the event any "stop-sale" order shall be issued under the provisions of this Article or section, the agents, inspectors or representatives of the Department of Agriculture and Consumer Services shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this Article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1; 1997-456, s. 27; 1997-261, s. 46.)

Editor's Note. — The four undesignated paragraphs in this section were renumbered as subsections (a) through (d) pursuant to S.L. 1997-456, s. 27 which authorized the Revisor of Statutes to renumber or reletter sections and parts of sections having a number or letter designation that is incompatible with the General Assembly's computer database.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subsection (d) twice substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture", twice deleted "of Agriculture" following "the Department", and inserted "and Consumer Services" preceding "shall release the".

ARTICLE 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose.

There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture and Consumer Services, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-270. Board membership.

The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture and Consumer Services, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 31.

North Carolina Seed Law.

§ 106-277.9. Prohibitions.

It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, distribute, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:

  a. Unless a seed license has been obtained in accordance with the provisions of this Article.

  b. Unless the test to determine the percentage of germination required by G.S. 106-277.5 through 106-277.7 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation; provided, the North Carolina Board of Agriculture may adopt after a public hearing, following public notice, rules and regulations to designate a longer period for any kind of agricultural or vegetable seed which is packaged in such container materials (hermetically sealed), and under such other conditions prescribed, that will, during such longer period, maintain the viability of said seed under ordinary conditions of handling.

c. Not labeled in accordance with the provisions of this Article or having a false or misleading labeling or claim.
d. Pertaining to which there has been a false or misleading advertisement.
e. Consisting of or containing prohibited noxious-weed seeds.
f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this Article.
g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this Article.
h. That have been treated and not labeled as required in this Article, or treated and not conspicuously colored.
i. Pepper seed in containers holding one ounce or more of seed, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.
j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.
k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.
l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this Article.
m. Unless it conforms to the definition of a "lot."
n. Any variety, hybrid or blend of seeds not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this Article.
o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale or distribution of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.
p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this Article.
q. By variety name seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

r. That employ a brand name on the label unless a variety or mixture of varieties is labeled as required in this Article. If a brand name other than a registered trademark is used, it must be a separate statement from the variety name or the statement of a mixture, or blend, of genetic variations.

s. Labeled as a "blend" unless the lot complies with the definition of "blend" in G.S. 106-277.2, and is registered with the Commissioner, as may be required in G.S. 106-277.9(1)n. Other mechanical combinations of varieties shall be labeled as a mixture according to the requirements in G.S. 106-277.5(1).

(2) To transport, offer for transportation, sell, offer for sale or expose for sale seeds, whole grain and screenings not for seeding purposes unless labeled "not for seeding purposes."

(3) To detach, alter, deface or destroy any label provided for in this Article or the rules and regulations promulgated thereunder, or to alter or substitute seed in any manner that defeats the purposes of this Article.

(4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds or screenings.

(5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.

(6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to remove or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.

(7) To use the name of the Department of Agriculture and Consumer Services or the results of tests and inspections made by the Department for advertising purposes.

(8) To use the words "type" or "trace" in lieu of information required by G.S. 106-277.4 through 106-277.7.

(9) To label and offer for sale seed under the scope of this Article without keeping complete records as specified in G.S. 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182; 1971, c. 637, s. 6; 1987 (Reg. Sess., 1988), c. 1034, ss. 7-9; 1997-261, s. 47.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "or the results" in subdivision (7).

§ 106-277.28. License and inspection fees.

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

(1) Repealed by Session Laws 1991, c. 588, s. 1.

(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:

a. Wholesale or combined wholesale and retail seed dealer $100.00

b. Retail seed dealer with sales of no more than $500.00	5.00
c. Retail seed dealer with sales of more than $500.00 but no more than $1,000	15.00
d. Retail seed dealer with sales of more than $1,000	25.00.

(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182; 1969, c. 105; 1987 (Reg. Sess., 1988), c. 1034, s. 13; 1989, c. 37, s. 8; 1991, c. 98, s. 1; c. 588, s. 1; 1995, c. 47, s. 5; 1997-261, s. 48.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "by the tenth" in the second paragraph in subdivision (3).

§ 106-277.29. Investigation committee; appointment; duties; authority.

(a) When any farmer believes that he has been damaged by the failure of agricultural or vegetable seed to produce or perform as represented by the label attached to such seed as required by G.S. 106-277.3, such farmer may make a sworn complaint against the dealer from whom such seeds were purchased, alleging the damages sustained, or to be sustained, and file same with the Commissioner of Agriculture within 10 days after alleged defect or violation becomes apparent and the farmer shall send a copy of said complaint to said dealer by United States registered mail. A filing fee of ten dollars ($10.00) shall be paid to the Commissioner of Agriculture with each complaint filed. Within 10 days after receipt of a copy of the complaint, the dealer may file with the Commissioner of Agriculture his answer to said complaint and send a copy of same to the farmer by United States registered mail.

(b) Any seed dealer against whom suit is brought in any court, state or federal, by a farmer who alleges that he has been damaged by the failure of seeds purchased from a seed dealer to perform as labeled, may request an investigation by the investigating committee.

(c) The Commissioner of Agriculture shall refer the complaint and the answer thereto to the investigation committee provided in this Article for investigation, findings and recommendations on the matters complained of.

(d) The Commissioner of Agriculture shall appoint an investigation committee composed of five members, one each to be appointed upon the recommendation of the following: Director of the North Carolina Agricultural Experiment Stations, N.C. State University; Director of the North Carolina Agricultural Extension Service, N.C. State University; and President of the North Carolina Seedmen's Association. The other two members shall be appointed by the Commissioner of Agriculture. One of the members appointed by the Commissioner of Agriculture must be a farmer who is not connected in any way in selling seeds at retail or wholesale. Each member shall continue to serve until replaced by the Commissioner of Agriculture. The committee shall elect a chairman and a secretary from its membership. It shall be the duty of the chairman to conduct all meetings and deliberations held by the committee and to direct all other activities of the committee. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the committee as directed by the chairman.

(e) The purpose of the investigation committee is to assist farmers and agricultural seed dealers in determining the facts relating to matters alleged in complaints made by farmers against dealers. The committee may recommend money damages be paid the farmer as a result of alleged failure of seeds to produce as represented by the label on the seed container.

(f) The investigation committee may be called into session by the Commissioner of Agriculture at his discretion or upon the direction of the chairman to consider matters referred to it by the Commissioner of Agriculture.

(g) When the Commissioner of Agriculture refers to the investigation committee any complaint made by a farmer against a dealer, said committee shall make a full and complete investigation of the matters complained of, and at the conclusion of said investigation, report its findings to the Commissioner of Agriculture. Upon receipt of same, the Commissioner of Agriculture shall transmit the findings and recommendations of the investigation committee to the farmer and to the dealer by United States registered mail. Neither the farmer nor the dealer shall be bound by the recommendations of the investigation committee.

(h) In conducting its investigation, the investigation committee is authorized:

(1) To examine the farmer on his farming operation of which he complains and the dealer on his packaging, labeling and selling operation of the seed alleged to be faulty;

(2) To grow to production a representative sample of the alleged faulty seed through the facilities of the State, under the supervision of the Commissioner of Agriculture when such action is deemed by the committee to be necessary;

(3) To hold informal hearings at a time and place directed by the chairman of the committee upon reasonable notice to the farmer and the dealer;

(4) To seek evaluations from authorities in allied disciplines, when deemed necessary.

(i) The committee shall keep a record of its activities and reports on file in the North Carolina Department of Agriculture and Consumer Services.

(j) Any investigation made by less than the whole membership of the committee shall be by authority of a written directive by the chairman and such investigation shall be summarized in writing and considered by the committee in reporting its findings and making its recommendations. (1971, c. 637, s. 7; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (i).

ARTICLE 31C.

North Carolina Commercial Feed Law of 1973.

§ 106-284.42. Inspection, sampling, and analysis.

(a) For the purpose of enforcement of this Article, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the Commissioner upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized (i) to enter, during normal business hours or actual operation, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution and take samples therefrom or to enter any vehicle being used to transport or hold such feeds and take samples therefrom; and (ii) to inspect during normal business hours or while in operation, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers, and labeling therein. The inspection may include the verification of such records, and production and control procedures as may be necessary to determine compliance with this Article.

(b) A separate presentation of appropriate credentials shall be given for each such inspection, but a presentation shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

(c) If the officer or employee making such inspection of a factory, warehouse, or other establishment has obtained a sample(s) in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample(s) obtained.

(d) If the owner of any factory, warehouse or establishment described in subsection (a), or his agent, refuses to admit the

Commissioner or his agent to inspect in accordance with subsections (a) and (b), the Commissioner or his agent is authorized to obtain without notice from any district or superior court judge within the county where the facility is located, an order directing such owner or his agent to submit the premises described in such order to inspection.

(e) Sampling and analysis shall be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods.

(f) The results of all analyses of official samples shall be forwarded by the Commissioner to the person named on the label and to the dealer. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, and upon written request within 30 days following receipt of the analysis, the Commissioner shall furnish to the registrant a portion of the sample concerned.

(g) The Commissioner, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in G.S. 106-284.33, subdivision (14), and obtained and analyzed as provided for in subsections (a), (c), and (e) of this section.

(h) The Board is authorized to adopt regulations establishing permitted analytical variation providing for reasonable deviation from the guaranteed analysis.

(i) The registrant of a commercial feed found to be in significant violative deviation from the guarantee shall be subject to a penalty for this deviation.

(j) If the analysis of a sample shows a deviation from permitted analytical variation established by the Board, the registrant or other responsible person shall be penalized according to the following schedule:

Component Deviating	*Method of Penalty Assessment*
Crude protein	Three times the relative percentage * of deviation from the guarantee times the retail value of the commercial feed.
Crude fat	Ten percent (10%) of retail value of the lot of commercial feed.
Crude fiber	Ten percent (10%) of retail value of the lot of commercial feed.
Vitamins	Ten percent (10%) of retail value of the lot of commercial feed.
Minerals	Ten percent (10%) of retail value of the lot of commercial feed.
Crude protein equivalent from nonprotein nitrogen	Ten percent (10%) of retail value of the lot of commercial feed.
Animal drugs	Twenty percent (20%) of retail value of the lot of commercial feed.
Antibiotics	Twenty percent (20%) of retail value of the lot of commercial feed.
Other analysis	Ten percent (10%) of retail value of the lot of commercial feed.

* Example, a feed guaranteed 16.0% protein and assaying only 14.0%, will be considered as 2.0%/16.0%, or 12.5% deficient in

protein. The penalty will be computed as 3 x 0.125 x retail value of the feed, or 0.375 x retail value of the feed.

(k) Penalties for multiple deficiencies within a sample shall be additive; provided that in no case shall the penalty exceed the retail value of the product. The minimum penalty under any of the foregoing provisions shall be twenty-five dollars ($25.00) or the retail value of the product whichever is smaller, regardless of the value of the deficiency.

(*l*) Within 60 days from the date of written notice by the Commissioner or his duly designated agent to the manufacturer, guarantor, dealer or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed or canned pet food represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian, for the express purpose of enforcement of this Article. (1973, ch. 771, s. 13; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (*l*).

§ 106-284.43. Detained commercial feeds.

(a) "Withdrawal from distribution" orders: When the Commissioner or his authorized agent has reasonable cause to believe any lot of commercial feed is being distributed in violation of any of the provisions of this Article or of any of the prescribed regulations under this Article, he may issue and enforce a written or printed "withdrawal from distribution" order, ordering the distributor not to dispose of the lot of commercial feed in any manner until written permission is given by the Commissioner or a court. The Commissioner shall release the lot of commercial feed so withdrawn when said provisions and regulations have been complied with. If compliance is not obtained within 30 days, the Commissioner may begin, or upon request of the distributor or registrant shall begin, proceedings for condemnation.

(b) "Condemnation and confiscation": Any lot of commercial feed not in compliance with said provisions and regulations shall be subject to seizure on complaint of the Commissioner to the superior court in the county in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of this Article, and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the State, provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with this Article. All costs and expenses incurred by the Department of Agriculture and Consumer Services in any proceedings associated with such seizure and confiscation shall be paid by the claimant. (1973, c. 771, s. 14; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock and poultry quarantine.

Cross References. — As to llamas, see § 106-22.4.

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases.

The North Carolina Department of Agriculture and Consumer Services is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal and poultry diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1; 1969, c. 606, s. 1; 1997-261, s. 49.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "is authorized and".

Part 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ 106-308. Appropriation to combat animal and fowl diseases.

If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture and Consumer Services has no funds available to immediately meet the situation in cooperation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and

Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture and Consumer Services, to be used by the North Carolina Department of Agriculture and Consumer Services in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of Part 4 of Article 34 of Chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation be spent for the purposes set forth in this section unless the funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C.S., s. 4875; 1951, c. 799; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-309. Disposition of surplus funds.

If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this Article shall be paid back to the State funds by the Department of Agriculture and Consumer Services out of the first funds received by said agricultural Department available for such purpose. (1915, c. 160, s. 2; C.S., s. 4876; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Part 3. Hog Cholera.

§ 106-313. Price of serum to be fixed.

The Department of Agriculture and Consumer Services shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C.S., s. 4878; 1997-261, s. 50.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "shall fix the".

§ 106-314. Manufacture and use of serum and virus restricted.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture and Consumer Services, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture and Consumer Services or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a Class 1 misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C.S., s. 4879; 1959, c. 576, s. 1; 1993, c. 539, s. 767; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" following "State" throughout the section.

§ 106-316. Counties authorized to purchase and supply serum.

If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture and Consumer Services sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C.S., s. 4881; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-322.3. When indemnity payments not to be made.

No payments shall be made for any swine slaughtered in the following cases:

(1) If the owner does not clean up and disinfect premises as directed by an inspector of the Animal Health Division, Agricultural Research Service, United States Department of Agriculture or the State Veterinarian or his authorized representative;

(2) Where the owner has not complied with the livestock disease control laws and regulations applicable to hog cholera;

(3) For swine in a herd in which hog-cholera vaccine has been used illegally on one or more animals in the herd;

(4) Swine involved in an outbreak in which the existence of hog cholera has not been confirmed by the State Veterinarian or his authorized representative;

(5) Swine belonging to the United States or the State of North Carolina;

(6) Swine brought into the State in violation of State laws or regulations;

(7) Swine which the claimant knew to be affected with hog cholera, or had notice thereof, at the time they came into his possession;

(8) Swine which have not been within the State of North Carolina for at least 30 days prior to discovery of the disease;

(9) Where the owner does not use reasonable care in protecting swine from exposure to hog cholera;

(10) Where the owner has failed to submit the reports required by the United States Department of Agriculture and the North Carolina Department of Agriculture and Consumer Services for animals on which indemnity is paid under Article 34.

(11) Swine purchased by a buying station for slaughter which are not slaughtered within 10 days of purchase. (1969, c. 525, s. 2½; 1997-261, s. 51.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "United States Department of Agriculture and the North Carolina Department of Agriculture and Consumer Services" for "United States and North Carolina Departments of Agriculture" in subdivision (10).

Part 5. Tuberculosis.

§ 106-340. Responsibility of owner of premises where sale is made.

When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture and Consumer Services. (1921, c. 177, s. 5; C.S., s. 4895(e); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-343. Appropriations by counties; elections.

The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in 10 days after said appropriation is voted, one fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in G.S. 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the state Department of Agriculture and Consumer Services and Federal Department of Agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C.S., s. 4895(h); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "state Department of Agriculture and Consumer Services and Federal Department of Agriculture" for "State and federal Departments of Agriculture" in the first and last sentences.

Part 6. Cattle Tick.

§ 106-360. Duty of sheriff.

It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of G.S. 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture and Consumer Services. If the sheriff of any county shall neglect, fail or refuse to render his assistance when so required, he shall be guilty of a Class 1 misdemeanor. (1923, c. 146, s. 11; C.S., s. 4895(z); 1993, c. 539, s. 771; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Part 8. Brucellosis (Bang's Disease).

§ 106-388. Animals affected with, or exposed to, brucellosis declared subject to quarantine, etc.

It is hereby declared that the disease of animals known as brucellosis, or Bang's disease, is of an infectious and contagious nature, and animals affected with, or exposed to, or suspected of being carriers of the disease, shall be subject to quarantine and the rules and regulations of the Department of Agriculture and Consumer Services. (1937, c. 175, s. 1; 1967, c. 511; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-392. Sales by nonresidents.

When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of G.S. 106-388 to 106-398 and the regulations of the Department of Agriculture and Consumer Services (1937, c. 175, s. 5; 1967, c. 511; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Part 10. Feeding Garbage to Swine.

§ 106-405.7. Inspection and investigation; maintenance of records.

(a) Any authorized representative of the North Carolina Commissioner of Agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative.

(c) Any operator, manager or person in charge of a restaurant, cafe, boardinghouse, school, hospital, or other public or private place where food is served to persons other than members of the immediate family or nonpaying guests of such operator, manager, or person in charge, shall not allow or permit garbage to be removed from the premises thereof unless the person removing said garbage is in possession of a valid garbage-feeding permit issued by the North Carolina Department of Agriculture and Consumer Services, or unless such person removing said garbage is in possession of a document from the county department of health wherein such garbage is located stating that the person removing said garbage is authorized to dispose of such garbage in a legal manner or unless such person removing said garbage is an employee of a municipality engaged in the regular collection of garbage for said municipality. The name and address or license number of any motor vehicle of any person removing garbage other than under authorization from the county department of health, the North Carolina Department of Agriculture and Consumer Services or a municipality, shall be reported by such operator, manager or person in charge, to the State Veterinarian within five days after the first removal of such garbage is made. (1953, c. 720, s. 7; 1971, c. 566, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" twice in subsection (c).

Part 11. Equine Infectious Anemia.

§ 106-405.16. Animals infected with or exposed to equine infectious anemia declared subject to quarantine.

It is hereby declared that the disease of horses, ponies, mules and asses (and other equine animals) known as equine infectious anemia is of an infectious and contagious nature and that animals infected with, exposed to, or suspected of being carriers of the disease shall be subject to quarantine and identification as required by the rules and regulations of the North Carolina Department of Agriculture and Consumer Services. (1973, c. 1198, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-405.17. Authority to promulgate and enforce rules and regulations.

The State Board of Agriculture shall have full power to promulgate and enforce such rules and regulations as it deems necessary for the control and eradication of equine infectious anemia. This authority shall include, but not be limited to, the power to make regulations requiring the testing of horses, ponies, mules and asses for equine infectious anemia prior to sale, exhibition or assembly at public stables or other public places, and authority to require the owner, operator or person in charge of shows, sales, public stables and other public places to require proof of freedom from equine infectious anemia before any animal is permitted to remain on the premises. The Board shall also have the authority to set fees for such tests as necessary to recover the costs to the North Carolina Department of Agriculture and Consumer Services. (1973, c. 1198, s. 3; 1981, c. 495, s. 7; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 35.

Public Livestock Markets.

§ 106-407.1. North Carolina Public Livestock Market Advisory Board created; appointment; membership; duties.

There is hereby created the North Carolina Public Livestock Market Advisory Board composed of eight persons, all of whom shall be residents of North Carolina, who shall be appointed and the chairman designated by the Commissioner of Agriculture on or before August 1, 1967. Two members of said Board shall be livestock producers, two shall be licensed livestock market operators, one shall be a meat packer, one shall be the State Veterinarian, one shall be a duly licensed and practicing veterinarian and one shall be an employee of the markets division of the North Carolina Department of Agriculture and Consumer Services. On the initial Board, two members shall be appointed for terms of one year, two members for terms of two years, two members for terms of three years, and two members for terms of four years. Thereafter, all members shall serve four-year terms. Any vacancy on the Board caused by death, resignation, or otherwise shall be filled by the Commissioner of Agriculture for the expiration of the term. The terms of all members of the initial and subsequent boards shall expire on June 30 of the year in which their terms expire.

It shall be the duty of the members of the Board to attend all hearings on applications for licenses to operate public livestock markets. The Board may meet once each year, or more often if directed by the Commissioner, in Raleigh or such other place in North Carolina as directed by the Commissioner for the purpose of (i) discussing problems of the livestock market industry, (ii) proposing changes in the rules and regulations of the Department of Agriculture and Consumer Services relative to public livestock markets, and (iii) making such other recommendations to the Commissioner and the Board of Agriculture as it deems in the best interest of the livestock industry of North Carolina.

Members of the Board, except members who are employees of the State, shall receive as compensation, subsistence and travel allowances, such sums as by law are provided for other commissions and boards. Compensation, subsistence and travel allowances authorized for the Board members shall be paid from fees collected pursuant to this Article. (1967, c. 894, s. 3; 1977, c. 132, s. 4; 1981, c. 337; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-408.1. Market operation fees.

A fee of twenty-five dollars ($25.00) shall be paid by the market operator to the North Carolina Department of Agriculture and Consumer Services for each day, or fraction thereof, a sale is held, provided that an additional maximum fee of ten dollars ($10.00) per one-half hour, or fraction thereof, shall be paid to the North Carolina Department of Agriculture and Consumer Services for operation after 6:00 P.M. Provided further, that the Board of Agriculture may at its discretion adjust both fees for market operation within the limits set in this section. A fee to be set by the Board of Agriculture may be charged to the buyer of cattle and swine required to be tested under G.S. 106-409 and 106-410, and the amount collected used to offset the twenty-five dollar ($25.00) market operation fee. All test fees charged in excess of twenty-five dollars ($25.00) shall revert to the North Carolina Department of Agriculture and Consumer Services and be payable within 24 hours following the close of a sale day. The starting and finishing time of each sale shall be recorded by the livestock inspector on his report of the sale. A copy of the report shall be given to the market operator or his representative following the sale. Failure to make the required payment within 24 hours following close of a sale day shall be cause for the Commissioner of Agriculture to prohibit, on 72 hours' notice, further sales at the market until the account is paid in full. The operation fee shall be waived when a livestock market operator employs a licensed, accredited veterinarian approved by the State Veterinarian to be present at the market from the starting time of the sale until all livestock to be admitted to the sales barn on that sale day have entered and such work in inspection, testing and vaccination as designated by the State Veterinarian has been completed. (1971, c. 739, s. 3; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.

Any person or persons who shall remove, or whose agent or employee at the direction of the employer, shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for immediate slaughter only in compliance with this Article and the applicable regulations of the Department of Agriculture and Consumer Services. It shall be a Class 1 misdemeanor for the owner of any cattle, swine or other livestock purchased for immediate slaughter, to order, direct or procure his agent or employee to transport said cattle, swine, or other livestock to any place other than a recognized slaughter plant or as provided in G.S. 106-409 and G.S. 106-410; and the agent or employee who transports said animal or animals shall likewise be guilty of a Class 1 misdemeanor.

Provided that, it shall not be a violation of law to ship swine out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5; 1967,

c. 894, s. 8; 1993, c. 539, s. 779; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health; movement to laboratory; removal of identification.

No cattle, swine, or other livestock with visible symptoms of a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative. The burden of proof to establish the health of any animal transported on the public highways of this State, or sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with, or exposed to, a contagious or infectious disease, or one he has or should have reason to believe is so affected, or exposed, shall be civilly liable for all damages resulting from such sale or trade; provided that, nothing in this section shall prevent an individual who owns or has custody of sick animals from transporting sick or dead animals to a disease diagnostic laboratory operated or approved by the North Carolina Department of Agriculture and Consumer Services if reasonable and proper precautions to prevent the exposure of other animals is taken by the owner or transporter thereof.

It shall be a Class 1 misdemeanor to remove before slaughter any ear tag, back tag, or other mark of identification approved by the Commissioner of Agriculture for identifying animals for disease control purposes unless prior written authorization has been obtained from the State Veterinarian or his authorized representative. (1941, c. 263, s. 9; 1967, c. 894, s. 11; 1993, c. 539, s. 780; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 35B.

Livestock Dealer Licensing Act.

§ 106-418.10. Prohibited conduct.

It shall be unlawful for any person to:

(1) Carry on or conduct the business of a livestock dealer without a current valid license issued by the North Carolina Department of Agriculture and Consumer Services under the provisions of this Article;

(2) Fail to keep the records required by G.S. 106-418.13. (1973, c. 196; 1997-261, s. 52.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "under the provisions" in subdivision (1).

§ 106-418.11. Licenses.

(a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. Such application shall contain the address, both business and personal, of the applicant. No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture and Consumer Services, which form shall require only the name and current address of the licensee. No renewal fee shall be charged.

(b) The Commissioner may suspend for a period not to exceed 120 days the license of any livestock dealer whom the Commissioner finds has violated G.S. 106-418.10(2). For a second violation of G.S. 106-418.10(2) within a period of two years, the Commissioner may revoke a dealer's license.

(c) The Commissioner may refuse to issue a license to any person who has (i) within five years of his application therefor, been finally adjudicated as having on two or more occasions violated the provisions of G.S. 106-418.10(1) or (ii) on three or more occasions within five years of his application therefor been finally adjudicated as violating G.S. 106-418.10(2).

(d) All proceedings relative to the suspension, revocation, or refusal of a license shall be conducted pursuant to the provisions of Chapter 150B of the General Statutes. (1973, c. 196; c. 1331, s. 3; 1975, c. 19, s. 34; 1987, c. 827, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (a).

ARTICLE 37.

Cotton Grading.

§ 106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.

The North Carolina Department of Agriculture and Consumer Services shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as it may adopt. The Department may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this Article. (1915, c. 175, s. 1; C.S., s. 4903; 1967, c. 24, s. 27; 1997-261, s. 53.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "shall have authority", and substituted "The Department" for "The North Carolina Department of Agriculture" preceding "rules and regulations".

§ 106-427. County commissioners to cooperate.

Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with the North Carolina Department of Agriculture and Consumer Services in aid of the purposes of this Article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C.S., s. 4904; 1967, c. 24, s. 27; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-428. Grading done at owner's request; grades as evidence.

The expert graders employed by the North Carolina Department of Agriculture and Consumer Services, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C.S., s. 4905; 1967, c. 24, s. 27; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§§ 106-429.1 through 106-434: Repealed by Session Laws 1997-74, s. 10, effective May 22, 1997.

§ 106-435. Fund for support of system; collection and investment.

In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: that on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June 30, 1922, twenty-five cents (25¢) shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum (10%) of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one-half the actual value of the warehouse property covered by such mortgages, and run not more than 10 years: Provided further, that the interest received from all investments shall be available for appropriation for capital projects and nonrecurring expenditures as provided in the bill making the appropriation, and for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of sections 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. The fund created by this section may be used for loans to owners of cotton gins to make improvements to gins to comply with federal and State air quality regulations, rules, and laws. The loans shall be secured and made under terms and conditions approved by the Board of Agriculture. Income earnings, including earnings from interest, may also be used by the Department of Agriculture and Consumer Services for cotton promotion activities. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C.S., s. 4925(e); 1957, c. 1091; 1993, c. 561, s. 95(a); 1993 (Reg. Sess., 1994), c. 769, s. 26(a); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted “Department of Agriculture and Consumer Services” for “Department of Agriculture”.

§§ 106-436 through 106-451.1: Repealed by Session Laws 1997-74, s. 11, effective May 22, 1997.

ARTICLE 38A.

Cotton Warehouse Act.

§ 106-451.7. Definitions.

As used in the Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Board of Agriculture.

(2) "Commissioner" means the North Carolina Commissioner of Agriculture.

(3) "Person" means an individual, partnership, firm, corporation, association, or two or more people having a joint or common interest.

(4) "Producer" means a farmer or grower of cotton.

(5) "Receipt" means a warehouse receipt issued pursuant to this Article.

(6) "Warehouse" means any building, structure or other protected enclosure in which cotton is or may be stored for hire.

(7) "Warehouseman" means a person licensed by North Carolina Department of Agriculture and Consumer Services to engage in the business of storing cotton for hire. (1987, c. 840, s. 1; 1997-261, s. 54.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "to engage in" in subdivision (7).

§ 106-451.9. Commissioner of Agriculture to administer and enforce Article.

The Commissioner of Agriculture shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article.

(2) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more divisions within the Department of Agriculture and Consumer Services.

(3) To delegate to any division head and other officer or employee of the Department of Agriculture and Consumer Services any of the powers and duties given to the Department by statute or by rules promulgated pursuant to this Article.

(4) To investigate and determine upon application, whether the warehouse is suitable for the proper storage of cotton.

(5) To conduct investigations of the daily operations of every State licensed warehouse.

(6) To prescribe, within the limits of this Article, the duties of the warehousemen with respect to their care of and responsibility for cotton stored in licensed warehouses.

(7) To issue licenses for the operation of warehouses under this Article.

(8) To cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency

of any other state or of the federal government for the purpose of administering or enforcing any of the provisions of this Article. (1987, c. 840, s. 1; 1997-261, s. 55.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivisions (2) and (3).

§ 106-451.24. Examination of books, records, etc., of warehousemen.

The Commissioner is authorized through officials, employees, or agents of the Department of Agriculture and Consumer Services designated by him to examine all books, records, papers, and accounts of warehouses and all cotton stored in warehouses licensed under this Article and of the warehousemen conducting such warehouse relating thereof. (1987, c. 840, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-451.25. Inspectors to be bonded.

Each inspector employed by the Commissioner for the inspection and examination of warehouses licensed under this Article shall be bonded in an amount not less than five thousand dollars ($5,000), or in such greater amount as the Commissioner deems necessary, for the faithful performance of his duties and for the proper accounting of all funds coming into his hands. The cost of the bond shall be paid by the Department of Agriculture and Consumer Services. (1987, c. 840, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 40.

Leaf Tobacco Sales.

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; fire insurance and extended coverage required; price fixing prohibited.

Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

Each tobacco board of trade organized pursuant to this section shall, on or before June 1, 1973, by regulation, require that all auction warehouse firms which are members of, or may hereafter request membership in, such board of trade for the purpose of displaying for sale and selling leaf tobacco, deposit with the board of trade prior to the market opening, a copy of a policy of fire insurance and extended coverage in a company licensed to do business in North Carolina to fully insure, as determined by the board of trade, the market value of the maximum volume of tobacco that will be weighed and left displayed for sale on said warehouse floor at any time during the marketing season. Warehouses using mechanized conveyor-line auction sales where tobacco is not displayed for sale on sales floor would be excluded from the requirement of this regulation.

In determining the market value and maximum volume of tobacco that will be weighed and placed on said warehouse floor at any one time, the board of trade shall use as criteria the prior season's official gross average price for that belt, as recorded by the North Carolina Department of Agriculture and Consumer Services and the maximum limit of daily sales, as recommended by the currently functioning flue-cured and burley tobacco marketing organizations, applied to each warehouse based on the firm's pro rata share of the market's maximum limit daily sales opportunity, multiplied times the number of days of sales that said warehouse plans to place on sales floor at any one time, including any and all tobacco weighed and deposited with the warehouse as bailee for future sale. The data relating to the official average price and the maximum limits of daily sales shall be assembled and supplied by the North Carolina Commissioner of Agriculture or his representative to the board of trade in each tobacco market in North Carolina, at least 30 days prior to the opening of markets in each belt.

It shall be unlawful for any person, firm, or corporation to operate an auction sale in said market until said policy is so deposited with and approved by the board of trade. The board of trade shall enjoin the sale of tobacco by any warehouse firm that fails to so deposit a policy of fire insurance and extended coverage with the board.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than 3,000,000 pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars ($100.00) in those towns in which during said period of time more than 3,000,000 and less than 10,000,000 pounds of tobacco was sold; a fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than 10,000,000 and less than 25,000,000 pounds of tobacco was sold; a fee of three hundred dollars ($300.00) in those towns in which during said period of time more than 25,000,000 pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

(1) Warehousemen;

(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a Class 1 misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383; 1973, c. 96; 1993, c. 539, s. 790; 1994, Ex. Sess., c. 24, s. 14(c); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-503.1. Board authorized to construct and finance facilities and improvements for fair.

(a) Borrowing Money and Issuing Bonds. — For the purpose of building, enlarging and improving the facilities on the properties of the State fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars ($100,000), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture and Consumer Services or the agricultural fund, other than the revenue of the State fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State fair assets may be pledged as security for the payment of any bonds that may be issued.

(b) Contracts and Leases; Pledge of Gate Receipts, etc. — For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State fairgrounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

(c) Gifts and Endowments. — The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009; 1959, c. 1186, s. 3; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (a).

ARTICLE 49.

Poultry; Hatcheries; Chick Dealers.

§ 106-539. National poultry improvement plan.

In order to promote the poultry industry of the State, the North Carolina Department of Agriculture and Consumer Services is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry improvement plan. (1945, c. 616, s. 1; 1969, c. 464; 1983, c. 290, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "North Carolina Department of Agriculture and Consumer Services" for "North Carolina Department of Agriculture".

§ 106-542. Hatcheries, chick dealers and others to obtain license to operate.

(a) It shall be unlawful for any person, firm or corporation to operate a hatchery within this State without first obtaining a hatchery license from the Department of Agriculture and Consumer Services for a fee of twenty-five dollars ($25.00) per year.

(b) It shall be unlawful for any person, firm or corporation to operate as a hatching egg dealer, chick dealer or jobber within this State without first obtaining a license from the Department of

Agriculture and Consumer Services for a fee of ten dollars ($10.00) per year.

(c) The Department of Agriculture and Consumer Services may deny, suspend, revoke or refuse to renew the license of any person, firm or corporation for violation of this Article or any rule or regulation promulgated thereunder. (1945, c. 616, s. 4; 1969, c. 464; 1983, c. 290, s. 4; 1997-261, s. 56.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" following "Department of Agriculture" in subsections (a) through (c).

§ 106-543. Requirements of national poultry improvement plan must be met.

All baby chicks, turkey poults and hatching eggs produced, sold or offered for sale shall originate in flocks that meet the requirements of the national poultry improvement plan as administered by the North Carolina Department of Agriculture and Consumer Services and the regulations issued by authority of this Article for the control of pullorum disease and other infectious diseases provided that nothing in this Article shall require any hatchery to adopt the national poultry improvement plan. (1945, c. 616, s. 5; 1969, c. 464; 1983, c. 290, s. 5; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-546. Notice describing grade of chicks to be posted.

All hatcheries, chick dealers or jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the North Carolina Department of Agriculture and Consumer Services describing the grade of chicks approved by the North Carolina Department of Agriculture and Consumer Services. (1945, c. 616, s. 8; 1969, c. 464; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, twice substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-547. Records to be kept.

Every hatchery, hatching egg dealer, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture and Consumer Services may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9; 1969, c. 464; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-549.01. Civil penalties.

The Department of Agriculture and Consumer Services may assess a civil penalty of not more than five thousand dollars ($5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation. (1995, c. 516, s. 12; 1997-261, s. 57.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "may assess a".

ARTICLE 49B.

Meat Inspection Requirements; Adulteration and Misbranding.

§ 106-549.15. Definitions.

As used in this Article, except as otherwise specified, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not adulterated under clause 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive or color additive in or on such article is prohibited by order of the Commissioner in establishments at which inspection is maintained under this Article;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

i. If it is margarine containing animal fat and any of the raw material used therein consist in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person, firm, or corporation engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, horses, mules, or other equines.

(3) "Authorized representative" means the Director of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture and Consumer Services.

(4) "Board" means the North Carolina Board of Agriculture.

(5) "Capable of use as human food" shall apply to any carcass, or part or product of a carcass, of any animal, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(8) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907 (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(9) "Firm" means any partnership, association, or other unincorporated business organization.

(10) "Intrastate commerce" means commerce within this State.

(11) "Label" means a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

(12) "Labeling" means all labels and other written, printed, or graphic matter (i) upon any article or any of its containers or wrappers, or (ii) accompanying such article.

(13) "Meat broker" means any person, firm, corporation engaged in the business of buying or selling carcasses, parts of carcasses, meat, or meat food products of cattle, sheep, swine, goats, bison, horses, mules, or other equines on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person, firm, or corporation.

(14) "Meat food product" means any product capable of use as human food that is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, goats, bison, fallow deer, or red deer, excepting products that contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and that are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, goats, and bison.

(15) "Misbranded" shall apply to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. If in a package or other container unless it bears a label showing (i) the name and place of business of the manufacturer, packer, or distributor; and (ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under clause (ii) of this paragraph e, reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this or the subsequent Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.21 unless (i) it conforms to such definition and standard, and (ii) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.21, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of paragraph g, unless its label bears (i) the common or usual name of the food, if any there be, and (ii) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner, be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause (ii) of this paragraph i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this paragraph k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear, directly thereon or on its container, as the Board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(16) "Official certificate" means any certificate prescribed by regulations of the Board for issuance by an inspector or other person performing official functions under this or the subsequent Article.

(17) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(18) "Official inspection legend" means any symbol prescribed by regulations of the Board showing that an article was inspected and passed in accordance with this or the subsequent Article.

(19) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the Board to identify the status of any article or animal under this or the subsequent Article.

(20) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(21) "Prepared" means slaughtered, canned, salted, smoked, rendered, boned, cut up, or otherwise manufactured or processed.

(21a) "Ratite" means a bird whose breastbone is smooth so that flight muscles cannot attach, such as an ostrich, an emu, and a rhea. These birds are subject to the provisions of this Article and Article 49C to the same extent as any other meat food product.

(22) "Renderer" means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, red deer, horses, mules, or other equines, except rendering conducted under inspection under this Article. (1969, c. 893, s. 1; 1991, c. 317, ss. 4, 5; 1993, c. 311, s. 1; 1995, c. 194, ss. 1, 2; 1997-142, ss. 4, 5; 1997-261, s. 58.)

Effect of Amendments. — Session Laws 1997-142, ss. 4 and 5, effective June 4, 1997, inserted "or red deer" in subdivisions (14) and (22) and made related changes.

Session Laws 1997-261, s. 58, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (3).

§ 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines shall be subject to a careful examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, fallow deer, red deer, bison, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering. (1969, c. 893, s. 3; 1981, c. 376, s. 1; 1991, c. 317, s. 6; 1995, c. 194, s. 3; 1997-142, s. 6.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" throughout the section.

§ 106-549.18. Inspection; stamping carcass.

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as "Inspected and Passed"; and said inspectors shall label, mark, stamp, or tag as "Inspected and Condemned," all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy any such condemned carcass or part thereof. (1969, c. 893, s. 4; 1991, c. 317, s. 7; 1995, c. 194, s. 4; 1997-142, s. 7.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" near the beginning and deleted "[do]" following "fails to" near the end.

§ 106-549.19. Application of Article; place of inspection.

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article. (1969, c. 893, s. 5; 1991, c. 317, s. 8; 1995, c. 194, s. 5; 1997-142, s. 8.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" near the beginning.

§ 106-549.20. Inspectors' access to businesses.

For the purposes hereinbefore set forth the Commissioner or his authorized representative shall cause to be made by inspectors appointed for that purpose an examination and inspection of all meat food products prepared in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where such articles are prepared for intrastate commerce and for the purposes of any examination and inspection said inspectors shall have access at all times during regular business hours to every part of said establishment; and said inspectors shall mark, stamp, tag, or label as "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" all such products found to be not adulterated; and said inspectors shall label, mark, stamp, or tag as "North Carolina Department of Agriculture and Consumer Services Inspected and Condemned" all such products found adulterated, and all such condemned meat food products shall be destroyed for food purposes, as hereinbefore provided, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to so destroy such condemned meat food products. (1969, c. 893, s. 6; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-549.21. Stamping container or covering; regulation of container.

(a) When any meat or meat food product prepared for intrastate commerce which has been inspected as hereinbefore provided and marked "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" shall be placed or packed in any can, pot, tin, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained, the person, firm, or corporation preparing said product shall cause a label to be attached to said can, pot, tin, canvas, or other receptacle or covering, under supervision of an inspector, which label shall state that the contents thereof have been "North Carolina Department of Agriculture and Consumer Services Inspected and Passed" under the provisions of this Article, and no inspection and examination of meat or meat food products deposited or inclosed in cans, tins, pots, canvas, or other receptacle or covering in any establishment where inspection under the provisions of this Article is maintained shall be deemed to be complete until such meat or meat food products have been sealed or inclosed in said can, tin, pot, canvas, or other receptacle or covering under the supervision of an inspector.

(b) All carcasses, parts of carcasses, meat and meat food products inspected at any establishment under the authority of this Article and found to be not adulterated shall at the time they leave the establishment bear, in distinctly legible form, directly thereon or on their containers, as the Commissioner or authorized representative may require, the information required under subdivision (15) of G.S. 106-549.15.

(c) The Board whenever it determines such action is necessary for the protection of the public, may prescribe:

(1) The styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any articles or animals subject to this and the subsequent Article;

(2) Definitions and standards of identity or composition for articles subject to this Article and standards of fill of container for such articles not inconsistent with any such standards established under the Federal Food, Drug, and Cosmetic Act, or under the Federal Meat Inspection Act, and there shall be consultation between the Commissioner or his authorized representative and the Secretary of Agriculture of the United States prior to the issuance of

such standards to avoid inconsistency between such standards and the federal standards.

(d) No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in intrastate commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading, and which are approved by the Commissioner or his authorized representative, are permitted.

(e) If the Commissioner or his authorized representative has reason to believe that any marking or labeling or the size or form of any container in use or proposed for use with respect to any article subject to this title is false or misleading in any particular, he may direct that such use be withheld unless the marking, labeling, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the marking, labeling or container does not accept the determination of the Commissioner or his authorized representative, such person, firm, or corporation may request a hearing, but the use of the marking, labeling, or container shall, if the Commissioner so directs, be withheld pending hearing and final determination by the Commissioner. A person who uses or proposes to use the marking, labeling, or container and who does not accept the determination of the Commissioner may commence a contested case under G.S. 150B-23. If directed by the Commissioner, the marking, labeling, or container may not be used pending a final decision. (1969, c. 893, s. 7; 1973, c. 1331, s. 3; 1987, c. 827, s. 35; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" twice in subsection (a).

§ 106-549.22. Rules and regulations of Board.

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as "North Carolina Department of Agriculture and Consumer Services Inspected and Passed." (1969, c. 893, s. 8; 1991, c. 317, s. 9; 1995, c. 194, s. 6; 1997-142, s. 9; 1997-261, s. 109.)

Effect of Amendments. — Session Laws 1997-142, s. 9, effective June 4, 1997, inserted "red deer" following "fallow deer".

Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-549.23. Prohibited slaughter, sale and transportation.

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or

(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded. (1969, c. 893, s. 9; 1981, c. 376, s. 2; 1991, c. 317, s. 10; 1995, c. 194, s. 7; 1997-142, s. 10.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" in the introductory language.

§ 106-549.25. Slaughter, sale and transportation of equine carcasses.

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, red deer, bison, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared. (1969, c. 893, s. 11; 1991, c. 317, s. 11; 1995, c. 194, s. 8; 1997-142, s. 11.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" in the second sentence.

§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a Class I felony which may include a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000); and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a Class I felony and shall, upon conviction thereof, be summarily discharged from office and may be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000). (1969, c. 893, s. 12; 1991, c. 317, s.12; 1993, c. 539, s. 1298; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 9; 1997-142, s. 12.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" in the first sentence.

§ 106-549.27. Exemptions from Article.

(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, swine, fallow deer, red deer, bison, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any cattle, sheep, swine, goats, fallow deer, red deer, bison, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture.

(b) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments. Meat food products coming under this subsection may be stored, processed, or prepared at any freezer locker plant provided such meat food products are identified and kept separate and apart from other meat food products bearing the official mark of inspection while in the freezer locker plant.

(c) In order to accomplish the objectives of this Article, the Commissioner shall exempt any other operations which the Commissioner shall determine would best be exempted to further the purposes of this Article, to the extent such exemptions conform to the Federal Meat Inspection Act and the regulations thereunder.

(d) The slaughter of animals and preparation of articles referred to in paragraphs (a) (2) and (b) of this section shall be conducted in accordance with such sanitary conditions as the Board may by regulations prescribe. Willful violation of any such regulation is a Class 2 misdemeanor.

(e) The adulteration and misbranding provisions of this title, other than the requirement of the inspection legend, shall apply to articles which are not required to be inspected under this section. (1969, c. 893, s. 13; 1971, c. 54, ss. 1, 2; 1991, c. 317, s. 13; 1993, c. 539, s. 799; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 10; 1997-142, s. 13.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer" twice in subdivision (a)(2).

§ 106-549.28. Regulation of storage of meat.

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, red deer, bison, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a Class 2 misdemeanor. (1969, c. 893, s. 14; 1991, c. 317, s. 14; 1993, c. 539, s. 800; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 194, s. 11; 1997-142, s. 14.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, inserted "red deer".

ARTICLE 49C.

Federal and State Cooperation as to Meat Inspection; Implementation of Inspection.

§ 106-549.29. North Carolina Department of Agriculture and Consumer Services responsible for cooperation.

(a) The North Carolina Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 301 of the Federal Meat Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the meat inspection program of this State under this and the previous Article in such a manner as will effectuate the purposes of this and the previous Article.

(b) In such cooperative efforts, the North Carolina Department of Agriculture and Consumer Services is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The North Carolina Department of Agriculture and Consumer Services is further authorized to recommend to the said Secretary of

Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in Section 301 of the Federal Meat Inspection Act; and the Commissioner or his authorized representative shall serve as the representative of the Governor for consultation with said Secretary under paragraph (c) of Section 301 of said act. (1969, c. 893, s. 15; 1985 (Reg. Sess., 1986), c. 1014, s. 155(a); 1997-261, s. 59.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" following "Department of Agriculture" in the section catchline and in subsections (a) through (c).

§ 106-549.31. Enforcement against uninspected meat.

Whenever any carcass, part of a carcass, meat or meat food product of cattle, sheep, swine, goats, horses, mules, or other equines, or any product exempted from the definition of a meat food product, or any dead, dying, disabled, or diseased cattle, sheep, swine, goat, or equine is found by any inspector of the Meat and Poultry Inspection Service of the North Carolina Department of Agriculture and Consumer Services upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that is has not been inspected, in violation of the provisions of Article 49B or of the Federal Meat Inspection Act or the Federal Food, Drug and Cosmetic Act, or that such article or animal has been or is intended to be distributed in violation of any such provisions, it may be detained by such inspector, upon approval of his supervisor, for a period not to exceed 20 days, pending action under G.S. 106-549.33, and shall not be moved by any person, firm, or corporation from the place at which it is located when so detained, until released by the area supervisor of the Meat and Poultry Inspection Service. All official marks may be required by such inspector to be removed from such article or animal before it is released unless it appears to the satisfaction of the area supervisor that the article or animal is eligible to retain such marks. (1969, c. 893, s. 17; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-549.38. Rules and regulations of State Department of Agriculture and Consumer Services.

All rules and regulations of the Department of Agriculture and Consumer Services not inconsistent with the provisions of this Article shall remain in full force and effect until amended or repealed by the Board. (1969, c. 893, s. 27; 1997-261, s. 60.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in the section catchline, and substituted "the Department of Agriculture and Consumer Services" for "the North Carolina Department of Agriculture" preceding "not inconsistent with".

ARTICLE 49D.

Poultry Products Inspection Act.

§ 106-549.51. Definitions.

For purposes of this Article, the following terms shall have the meanings stated below:

(1) "Adulterated" shall apply to any poultry product under one or more of the following circumstances:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

b. 1. If it bears or contains (by reason of administration of any substance to the live poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the Commissioner, make such article unfit for human food;

2. If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

3. If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

4. If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, that an article which is not otherwise deemed adulterated under paragraphs 2, 3, or 4 shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the Board in official establishments;

c. If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

d. If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

e. If it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter;

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

g. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act; or

h. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Animal food manufacturer" means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

(3) "Board" means the North Carolina Board of Agriculture.

(4) "Capable of use of human food" shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the Board to deter its use as human food, or it is naturally inedible by humans.

(5) "Color additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(6) "Commissioner" means the North Carolina Commissioner of Agriculture or his authorized representative.

(7) "Container" or "package" includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

(8) "Federal Food, Drug, and Cosmetic Act" means the act so entitled, approved June 25, 1938 (52 Stat. 1040), and acts amendatory thereof or supplementary thereto.

(9) "Federal Poultry Products Inspection Act" means the act so entitled, approved August 28, 1957 (71 Stat. 441), as amended by the Wholesome Poultry Products Act (82 Stat. 791).

(10) "Food additive" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(11) "Immediate container" includes any consumer package; or any other container in which poultry products, not consumer packaged, are packed.

(12) "Inspection service" means the official government service within the Department of Agriculture and Consumer Services designated by the Commissioner as having the responsibility for carrying out the provisions of this Article.

(13) "Inspector" means an employee or official of the Department of Agriculture and Consumer Services authorized by the Commissioner to inspect poultry and poultry products under the authority of this Article, or any employee or official of the government of any county or other governmental subdivision of this State authorized by the Commissioner to inspect poultry and poultry products under authority of this Article, under an agreement entered into between the Department and such governmental subdivision.

(14) "Intrastate commerce" means commerce within this State.

(15) "Label" means a display of written, printed, or graphic matter upon any article or the immediate container (not including package liners) of any article.

(16) "Labeling" means all labels and other written, printed, or graphic matter

a. Upon any article or any of its containers or wrappers, or

b. Accompanying such article.

(17) "Misbranded" shall apply to any poultry product under one or more of the following circumstances:

a. If its labeling is false or misleading in any particular;

b. If it is offered for sale under the name of another food;

c. If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

d. If its container is so made, formed, or filled as to be misleading;

e. Unless it bears a label showing

1. The name and place of business of the manufacturer, packer, or distributor; and

2. An accurate statement of the quantity of the product in terms of weight, measure, or numerical count;

Provided, that under paragraph 2 of this subsubdivision e, reasonable variations may be permitted, and exemptions as to small packages or articles not in packages or other containers may be established, by regulations prescribed by the Board;

f. If any word, statement, or other information required by or under authority of this Article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

g. If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Board under G.S. 106-549.55 unless

1. It conforms to such definition and standard, and

2. Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

h. If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the Board under G.S. 106-549.55, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

i. If it is not subject to the provisions of subsubdivision g, unless its label bears

1. The common or usual name of the food, if any there be, and
2. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the Commissioner be designated as spices, flavorings, and colorings without naming each: Provided, that, to the extent that compliance with the requirements of clause 2 of this subsubdivision i is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board;

j. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board, after consultation with the Secretary of Agriculture of the United States, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;

k. If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: Provided, that, to the extent that compliance with the requirements of this subsubdivision k is impracticable, exemptions shall be established by regulations promulgated by the Board; or

l. If it fails to bear on its containers, and in the case of nonconsumer packaged carcasses (if the Commissioner so requires) directly thereon, as the Board may by regulations prescribe, the official inspection legend and official establishment number of the establishment where the article was processed, and, unrestricted by any of the foregoing, such other information as the Board may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

(18) "Official certificate" means any certificate prescribed by regulation of the Board for issuance by an inspector or other person performing official functions under this Article.

(19) "Official device" means any device prescribed or authorized by the Board for use in applying any official mark.

(20) "Official establishment" means any establishment as determined by the Commissioner at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Article.

(21) "Official inspection legend" means any symbol prescribed by regulation of the Board showing that an article was inspected for wholesomeness in accordance with this Article.

(22) "Official mark" means the official inspection legend or any other symbol prescribed by regulation of the Board to identify the status of any article or poultry under this Article.

(23) "Person" means any individual, partnership, corporation, association, or other business entity.

(24) "Pesticide chemical" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(25) "Poultry" means any domesticated bird, whether live or dead.

(25a) "Poultry composting facility" means a structure or enclosure in which whole, unprocessed poultry carcasses are decomposed by a natural process into an organic, biologically safe by-product that can be used for plant food.

(26) "Poultry product" means any poultry carcass, or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the Board from definition as a poultry product under such conditions as the Board may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

(27) "Poultry products broker" means any person engaged in the business of buying or selling poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

(28) "Processed" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(29) "Raw agricultural commodity" shall have the same meaning for purposes of this Article as under the Federal Food, Drug, and Cosmetic Act.

(30) "Renderer" means any person engaged in the business of rendering carcasses, or parts or products of the carcasses, or poultry, except rendering conducted under inspection or exemption under this Article.

(31) "Shipping container" means any container used or intended for use in packaging the product packed in an immediate container. (1971, c. 677, s. 4; 1995, c. 543, s. 3; 1997-261, s. 61.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subdivision (12) substituted "the Department of Agriculture and Consumer Services" for "this State Department of Agriculture" preceding "designated by the", in subdivision (13) substituted "Department of Agriculture and Consumer Services" for "State Department of Agriculture" preceding "authorized by the", and deleted "of Agriculture" preceding "and such governmental".

§ 106-549.52. State and federal cooperation.

(a) The Department of Agriculture and Consumer Services is hereby designated as the State agency which shall be responsible for cooperating with the Secretary of Agriculture of the United States under the provisions of section 5 of the Federal Poultry Products Inspection Act and such agency is directed to cooperate with the Secretary of Agriculture of the United States in developing and administering the poultry products inspection program of this State under this Article and in developing and administering the program of this State under G.S. 106-549.58 in such a manner as will effectuate the purposes of this Article and said federal act.

(b) In such cooperative efforts, the Department is authorized to accept from said Secretary advisory assistance in planning and otherwise developing the State program, technical and laboratory assistance and training (including necessary curricular and instructional materials and equipment), and financial and other aid for administration of such a program.

(c) The Department is further authorized to recommend to the Secretary of Agriculture such officials or employees of this State as the Commissioner shall designate, for appointment to the advisory committees provided for in section 5 of the Federal Poultry Products Inspection Act; and the Commissioner shall serve as the representative of the Governor for consultation with said Secretary under subsection (c) of section 5 of said act. (1971, c. 677, s. 5; 1985 (Reg. Sess., 1986), c. 1014, s. 155(b); 1997-261, s. 62.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, in subsection (a) inserted "and Consumer Services" preceding "is hereby designated"; and in subsections (b) and (c) deleted "of Agriculture" following "the Department".

§ 106-549.58. Poultry not for human consumption; records; registration.

(a) Inspection shall not be provided under this Article at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, but such articles shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as prescribed by regulations of the Board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any poultry carcasses or parts or products thereof which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the Board or are naturally inedible by humans.

(b) The following classes of persons shall, for such period of time as the Board may by regulations prescribe, not to exceed two years unless otherwise directed by the Commissioner for good cause shown, keep such records as are properly necessary for the effective enforcement of this Article in order to insure against adulterated or misbranded poultry products for the American consumer; and all persons subject to such requirements shall, at all reasonable times, upon notice by a duly authorized representative of the Department of Agriculture and Consumer Services, afford such representative access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all such records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

(1) Any person that engages in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any poultry,

for intrastate commerce, for use as human food or animal food;

(2) Any person that engages in the business of buying or selling (as poultry products brokers; wholesalers or otherwise), or transporting, in intrastate commerce, or storing in or for intrastate commerce, any carcasses, or parts or products of carcasses, of any poultry;

(3) Any person that engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter.

(c) No person shall engage in business, in or for intrastate commerce, as a poultry products broker, renderer, or animal food manufacturer, or engage in business in intrastate commerce as a wholesaler of any carcasses, or parts or products of the carcasses, of any poultry, whether intended for human food or other purposes, or engage in business as a public warehouseman storing any such articles in or for intrastate commerce, or engage in the business of buying, selling, or transporting in intrastate commerce any dead, dying, disabled, or diseased poultry, or parts of the carcasses of any poultry that died otherwise than by slaughter, unless, when required by regulations of the Board, he has registered with the Commissioner his name, and the address of each place of business at which, and all trade names under which, he conducts such business.

(d) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased poultry, or any parts of the carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce, any dead, dying, disabled, or diseased poultry or parts of the carcasses of any poultry that died otherwise than by slaughter, unless such transaction or transportation is made in accordance with such regulations as the Board may prescribe to assure that such poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food. (1971, c. 677, s. 11; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (b).

§ 106-549.59. Punishment for violations; carriers exempt; interference with enforcement.

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 shall be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than three years or both. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article shall be fined not more than five thousand dollars ($5,000) or imprisoned not more than three years, or both. Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than ten thousand dollars ($10,000) or imprisoned not more than 10 years, or both. (1971, c. 677, s. 12; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (b).

§ 106-549.65. Product detained if in violation.

Whenever any poultry product, or any product exempted from the definition of a poultry product, or any dead, dying, disabled, or diseased poultry is found by any inspector of the Meat and Poultry Inspection Service of the Department of Agriculture and Consumer Services upon any premises where it is held for purposes of, or during or after distribution in intrastate commerce, and there is reason to believe that any such article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected, in violation of the provisions of this Article or of any other State or federal law or that it has been or is intended to be, distributed in violation of any such provisions, it may be detained by such representative for a period not to exceed 20 days, pending action under G.S. 106-549.66 or notification of any federal, State, or other governmental authorities having jurisdiction over such article or poultry, and shall not be moved by any person, from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such article or poultry before it is released unless it appears to the satisfaction of the area supervisor of the Department of Agriculture and Consumer Services Poultry Inspection Service that the article or poultry is eligible to retain such marks. (1971, c. 677, s. 18; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, twice substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-549.69. Inspection costs.

The cost of inspection rendered under the requirements of this Article, shall be borne by this State, except as provided in G.S. 106-549.52 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Article, at such rates as the Commissioner may determine shall be borne by such establishments. Sums received by the Department of Agriculture and Consumer Services in reimbursement for sums paid out for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section. (1971, c. 677, s. 23; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Article 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ 106-549.70. Disposal pit, incinerator, or poultry composting facility required.

Every person, firm or corporation engaged in raising or producing poultry for commercial purposes shall provide and maintain a disposal pit, incinerator, or poultry composting facility of a size and design, approved by the Department of Agriculture and Consumer Services, in which all dead poultry carcasses are disposed. This section does not apply to poultry producers with flocks of 200 or less. The definitions provided in Article 49D of this Chapter apply in this Article. (1961, c. 1197, s. 1; 1995, c. 543, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

Article 49G.

Production and Sale of Pen-Raised Quail.

§ 106-549.94. Regulation of pen-raised quail by Department of Agriculture and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected.

(a) The Department of Agriculture and Consumer Services is given exclusive authority to regulate the production and sale of pen-raised quail for food purposes. The Board of Agriculture shall promulgate rules and regulations for the production and sale of pen-raised quail for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling pen-raised quail for food purposes.

(b) The North Carolina Wildlife Resources Commission shall retain its authority to regulate the possession and transportation of live pen-raised quail. (1971, c. 515, ss. 1-4; c. 1114; 1973, c. 1262, s. 18; 1977, c. 905, ss. 1, 2; 1979, c. 830, s. 15; 1997-261, ss. 63, 109.)

Effect of Amendments. — Session Laws 1997-261, ss. 63 and 109, effective July 1, 1997, inserted "and Consumer Services" in the section catchline, and substituted "The Department of Agriculture and Consumer Services" for "The North Carolina Department of Agriculture" at the beginning of subsection (a).

ARTICLE 49H.

Production and Sale of Fallow Deer and Red Deer.

§ 106-549.97. Regulation of fallow deer and red deer by Department of Agriculture and Consumer Services; certain authority of North Carolina Wildlife Resources Commission not affected; definitions.

(a) The Department of Agriculture and Consumer Services shall regulate the production and sale of fallow deer and red deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer and red deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer or red deer, or both, for food purposes.

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and live red deer and may adopt rules to prevent the release or escape of fallow deer or red deer, or both, upon finding that it is necessary to protect live fallow deer or live red deer, or both, or to prevent damage to the native deer population or its habitat.

(c) The following definitions apply in this Article:

(1) Fallow deer. — A member of the Dama dama species.

(2) Red deer. — A member of the Cervus elephus species. (1991, c. 317, s. 1; 1997-142, s. 1; 1997-261, s. 109.)

Effect of Amendments. — Session Laws 1997-142, s. 1, effective June 4, 1997, added "and Red Deer" in the article heading; inserted "and red deer" in the catchline and added "definitions" to the end of the catchline; in subsection (a) twice inserted "and red deer" and inserted "or red deer, or both," deleted the former second paragraph of subsection (a) which read: "As used in this section, 'fallow deer' (Dama dama spp.) means a small european deer raised commercially for production and sale for food purposes"; in subsection (b) inserted "and live red deer," inserted "or red deer, or both," inserted "or live red deer, or both," and added subsection (c).

Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture " in subsection (a).

§ 106-549.98. Inspection fees.

The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of fallow deer as required by Article 49B of Chapter 106 of the General Statutes. The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of red deer as required by Article 49B of Chapter 106 of the General Statutes. (1991, c. 317, s. 1; 1997-142, s. 1.)

Effect of Amendments. — The 1997 amendment, effective June 4, 1997, added the last sentence.

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ 106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.

With respect to any referendum conducted under the provisions of this Article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least 30 days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this Article shall exceed one half of one percent (½ of 1%) of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. Provided, that the assessment for the research and promotion programs of the American Dairy Association of North Carolina may be fixed on the volume of milk sold not to exceed one percent (1%) of the statewide blend price paid to all North Carolina producers during the previous calendar year for three and one-half percent (3.5%) milk as computed by the North Carolina Milk Commission. Provided further, that the assessment authorized by this Article and collected by the Commissioner of Agriculture to be paid to the North Carolina Yam Commission, Inc., or other duly certified agencies entitled thereto for research, marketing and promotional programs related to yams or sweet potatoes may be levied at a rate not to exceed two percent (2%) of the value of the year's production of that agricultural commodity grown by any farmer, producer or grower included in the group to which the referendum is submitted, and when authorized by two-thirds or more of the farmers, producers or growers in the area in which the referendum is conducted, the rate of the assessment may remain in effect for the length of time provided in the referendum. Provided further, that the assessment authorized by this Article on peanuts may not exceed two percent (2%) of the price paid to the producer. (1947, c. 1018, s. 8; 1967, c. 774, s. 1; c. 1268; 1981, c. 216, s. 1; 1983, c. 246, s. 1; 1997-371, s. 1.)

Effect of Amendments. — The 1997 amendment, effective August 6, 1997, added the last sentence.

§ 106-564.1. Alternate method for collection of assessments.

As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the first day of June of each year following such deduction or at regular intervals during the year following such deductions, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents.

For the purposes of this Article the Commissioner may designate the duly certified agency of the producers as his agent to conduct inspections or audits of the books of the purchaser of such agricultural products. If it is discovered, as the result of such inspection or audit, that such purchaser has willfully failed to remit assessments when due, then such purchaser shall be liable to the duly certified producers agency for the reasonable costs of such inspection or audit. Such costs may be recovered by the agency by an action against the purchaser in a court of competent jurisdiction. The agency shall also be entitled to recover from such purchaser a penalty of five percent (5%) of the amount due for each month it remains unpaid, not to exceed twenty percent (20%) of the total amount due.

Any packer, processor or other purchaser who originally purchases from the grower, apples grown in North Carolina, shall collect from the grower thereof any marketing assessment due under the provisions of Article 50 of Chapter 106 and shall remit the same to the North Carolina Department of Agriculture and Consumer Services. Upon failure of said packer, processor or other purchaser to collect and remit said assessment then the amount of the assessment shall become the obligation of the packer, processor or other purchaser who originally purchased the apples from the grower and he shall become liable therefor to the North Carolina Department of Agriculture and Consumer Services. Failure of the packer, processor or other purchaser to comply with the provisions of this section shall constitute a bar to engaging in said business in this State upon proper notice from the Board of Agriculture. The Board of Agriculture shall have authority to promulgate such rules and regulations as shall be necessary to carry out the purpose and intent of this section. (1953, c. 917; 1969, c. 605, s. 3; 1975, c. 708, s. 2; 1983, c. 395; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, twice substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ 106-568.3. Action of Board of Agriculture on petition for referendum; creation of the Tobacco Research Commission.

(a) The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Provided, that the petition for a tobacco referendum shall be signed by and, once approved, shall authorize the holding of a referendum by the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated.

(b) There is hereby created a North Carolina Tobacco Research Commission within the Department of Agriculture and Consumer Services. The Commission shall consist of the Commissioner of Agriculture, or his designee; the President of the North Carolina Farm Bureau Federation, Inc., or his designee; the President of the Tobacco Growers Association of North Carolina, Incorporated, or his designee; the Master of the North Carolina State Grange, or his designee; and, the President of the North Carolina Tobacco Foundation, Inc., or his designee. (1951, c. 827, s. 3; 1991, c. 102, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (b).

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.

(a) Fertilizer and feed assessments. In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-284.40 and 106-671. The Commissioner shall then remit said ten cents (10¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ten cents (10¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture and Consumer Services as provided for in G.S. 106-284.40(c).

(b) Tobacco Poundage Assessments. In the event two-thirds or more of the eligible farmers and producers participating in the tobacco referendum vote in favor of the tobacco poundage assessment authorized under this Article, then said assessment shall be collected for a period of six years under rules, regulations, and methods adopted by the North Carolina Tobacco Research Commission. The North Carolina Tobacco Research Commission is exempt from the provisions of Chapter 150B of the General Statutes.

The assessments collected shall be remitted to the Department of Agriculture and Consumer Services to be expended under the direction of the Tobacco Research Commission for research and dissemination of research facts concerning tobacco. Any person that receives assessment funds from the Tobacco Research Commission shall file quarterly written reports with the Tobacco Research Commission on the receipt and expenditure of assessment funds. The Tobacco Research Commission may transfer assessments to the North Carolina Tobacco Foundation, Inc., to be held and invested by the Tobacco Foundation until such time as the Commission shall direct their expenditure for the purposes set forth in this section. (1951, c. 827, s. 8; 1967, c. 631, s. 1; 1975, c. 646; 1981, c. 181, s. 1; 1989, c. 770, s. 27; 1991, c. 102, s. 6; 1995, c. 239, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" throughout the section.

§ 106-568.9. Refunds to farmers.

In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. Provided, that the Department of Agriculture and Consumer Services shall make tobacco poundage assessment refunds to tobacco farmers when such demand for refund is made in writing by the tobacco farmer within 30 days of the close of the marketing season. (1951, c. 827, s. 9; 1991, c. 102, s. 7; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 51A.

North Carolina Antifreeze Law of 1975.

§ 106-579.4. Registrations.

On or before the first day of July of each year, and before any antifreeze may be distributed for the permit year beginning July 1, the manufacturer, packager, or person whose name appears on the label shall make application to the Commissioner on forms provided by the latter for registration for each brand of antifreeze which he desires to distribute. The application shall be accompanied by specimens or facsimiles of labeling for all container sizes to be distributed, when requested by the Commissioner; a license and inspection fee of two hundred fifty dollars ($250.00) for each brand of antifreeze and a properly labeled sample of the antifreeze shall also be submitted at this time. The Commissioner may inspect, test, or analyze the antifreeze and review the labeling. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the Board, and if the said antifreeze is not such a type or kind that is in violation of this Article, the Commissioner shall thereafter issue a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid. If the antifreeze is adulterated or misbranded, if it fails to meet standards promulgated by the Board, or is in violation of this Article or regulations thereunder, the Commissioner shall refuse to register the antifreeze, and he shall return the application to the applicant, stating how the antifreeze or labeling is not in conformity. If the Commissioner shall, at a later date, find that a properly registered antifreeze product has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this Article, or that it violates regulations, definitions or standards duly promulgated by the Board, he shall notify the applicant that the license authorizing sale of the antifreeze is canceled. No antifreeze license shall be canceled unless the registrant shall have been given an opportunity to be heard before the Commissioner or his duly designated agent and to modify his application in order to comply with the requirements of this Article and regulations, definitions, and standards promulgated by the Board. All fees received by the Commissioner shall be placed in the Department of Agriculture and Consumer Services fund for the purpose of supporting the antifreeze enforcement and testing program. (1949, c. 1165; 1975, c. 719, s. 4; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-579.8. Inspection, sampling and analysis.

The Commissioner, or his authorized agent, shall have free access at reasonable hours to all places and property in this State where antifreeze is manufactured, stored, transported, or distributed, or offered or intended to be offered, for sale, including the right to inspect and examine all antifreeze there found, and to take reasonable samples of such antifreeze for analysis together with specimens of labeling. All samples so taken shall be properly sealed and sent to the Department of Agriculture and Consumer Services laboratories for examination together with all labeling appertaining thereto. It shall be the duty of the Commissioner to examine promptly all samples received in connection with the administration and enforcement of this Article and to report the results of such examination to the owner and registrant of the antifreeze. (1949, c. 1165; 1975, c. 179, s. 8; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-579.10. Enforcement.

(a) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted under this Article by the Board, he may issue and enforce a written or printed "stop sale" or "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the Commissioner or the court. Copies of such orders shall also be sent by certified mail to the registrant and to the person whose name and address appears on the labeling of the antifreeze. The Commissioner shall release for distribution the lot of antifreeze so withdrawn when said provisions of this Article and applicable rules and regulations have been complied with. If compliance is not obtained within 30 days of the date of notification to the registrant and the person whose name and address appears on the label, the Commissioner may begin proceedings for condemnation.

(b) Notwithstanding the provisions of subsection (a) of this section, any lot of antifreeze not in compliance with said provisions and regulations shall be subject to seizure upon complaint of the Commissioner to the district court in the county in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this Article and its duly adopted regulations, it may then order the condemnation of said antifreeze and the same shall be disposed of in any manner consistent with the rules and regulations of the Board and the laws of the State at the expense of the claimants thereof, under the supervision of the Commissioner; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, however, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving 30 days' notice, by certified mail at his last known address, to the owner of same, if he is known to the Commissioner, and to the registrant, if the antifreeze is registered, at the address shown on the label or on the registration certificate, so that such persons may apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this Article. When the violation can be corrected by proper labeling, processing of the product, or other action, the court, after all costs, fees and expenses incurred by the Commissioner have been paid and a good and sufficient bond, conditioned that such article shall be so corrected, has been executed, may by order direct that such article be delivered to the claimant thereof for such action as necessary to bring it into compliance with this Article and regulations under the supervision of the Commissioner. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Commissioner that the antifreeze is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(c) A copy of the analysis made by any chemist of the Department of Agriculture and Consumer Services of any antifreeze certified to by him shall be administered as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this Article.

(d) When the Commissioner finds any antifreeze being distributed in violation of any of the provisions of this Article or of any of the rules and regulations duly promulgated and adopted by the Board, he may request, and the person whose name and address appears on the labeling or the person who is primarily responsible for the product must promptly supply to him, the distribution data for such product in this State, so as to assure that violative products are not further distributed herein and that an orderly withdrawal from distribution may be attained where necessary to protect the public interest. (1949, c. 1165; 1975, c. 719, s. 10; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (c).

ARTICLE 52.

Agricultural Development.

§ 106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service.

It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture and Consumer Services, the School of Agriculture of North Carolina College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this Article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conservation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4; 1997-261, s. 109; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 11A.118(a), effective August 28, 1997, purported to substitute "Health and Human Services" for "Human Resources" however this phrase does not appear in this section.

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 53.

Grain Dealers.

§ 106-601. Definitions.

(a) "Cash buyer" means any grain dealer who pays the producer, or his representative at the time of obtaining title, possession or control of grain, the full agreed price of such grain in coin or currency, lawful money of the United States, certified checks, cashier's checks or drafts issued by a bank.

(b) "Commissioner" means the North Carolina Commissioner of Agriculture.

(c) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(d) "Grain" as used herein shall be construed to include, but not by way of limitation, corn, wheat, rye, oats, sorghum, barley, mixed grain and soybeans.

(e) "Grain dealer" means any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange, or transfers grain of a North Carolina producer. The term "grain dealer" shall exclude producers or groups of producers buying grain for consumption on their farms.

(f) "Person" means an individual, partnership, corporation, association, syndicate or other legal entity.

(g) "Producer" means the owner, tenant or operator of land in this State who has an interest in and receives all or any part of the proceeds from the sale of the grain produced thereon. (1973, c. 665, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (c).

§ 106-608. Disposition of fees.

All fees payable under this Article shall be collected by the North Carolina Department of Agriculture and Consumer Services for the administration of this Article. (1973, c. 665, s. 8; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 54.

Adulteration of Grains.

§ 106-621. Definitions.

For purposes of this Article, the following words or terms shall mean as follows:

(1) Adulterated grain: Grain which contains any substance, such as, but not limited to, Captan, carbon tetrachloride, Malathion, Parathion, DDT, Dieldrin, Thiram, Endrin, Heptachlor, Maneb, Methoxychlor, 2, 6-dichloro, 4-nitroaniline, pentachloronitrobenzene, hexachlorobenzene, Demeton, Phorate, Carbophenothion, in excess of the tolerance for human or animal consumption established for such substances by the laws of the State or the regulations of the North Carolina Department of Agriculture and Consumer Services, or both the State and the Department.

(2) Commissioner: North Carolina Commissioner of Agriculture.

(3) Grain: Corn, soybeans, milo, barley, oats, rye, and mixtures of them.

(4) Grain dealer: Any person owning, controlling or operating an elevator, mill, warehouse or other similar structure or truck or tractor-trailer unit or both who buys, solicits for sale or resale, processes for sale or resale, contracts for storage or exchange or transfers grain after obtaining title to the grain of a North Carolina producer. The term "grain dealer" shall exclude producers, groups of producers, or contract feeders buying grain for consumption in their operations.

(5) Person: Any individual, partnership, corporation, association, syndicate or other legal entity. (1975, c. 659, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (1).

§ 106-624. Sign furnished by Commissioner.

It shall be the duty of the Commissioner to cause to be prepared and furnished for a fee of ten dollars ($10.00) each to all grain dealers, as defined in this Article, in the State a sign not less than 11 x 15 inches, which shall contain information that it is a violation of law for any person to sell, offer for sale or deliver adulterated grain. Said sign shall also set out the penalties for violation of this Article. Duplicate signs, and replacement for signs lost, stolen, worn or otherwise unusable, shall be purchased from the Department of Agriculture and Consumer Services for a fee of five dollars ($5.00) per sign. (1975, c. 659, s. 4; 1989, c. 544, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-627. Determination of adulteration.

For purposes of evidence under this Article, the grain dealer or his agent, upon receipt or pending receipt of suspected adulterated grain, may, at his discretion, call any law-enforcement officer to verify the sampling technique, [and] origin of sampled grain and subsequently send or request the law-enforcement officer to send the sample of grain in a sealed package to the Department of Agriculture and Consumer Services for inspection and analysis in order to protect only the chain of evidence.

Upon [a] finding by the Department that said sample is adulterated grain, the Department shall notify the grain dealer of the results and return the sample to the original sender in a sealed package. (1975, c. 659, s. 7; 1997-261, s. 66.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, inserted "and Consumer Services" preceding "for inspection and" in the first paragraph, and deleted "of Agriculture" preceding "that said sample" in the second paragraph.

ARTICLE 55.

North Carolina Bee and Honey Act of 1977.

§ 106-635. Definitions.

As used in this Article:

(1) The term "apiary" means bees, comb, hives, appliances, or colonies, wherever they are kept, located, or found.

(2) The term "bee(s)" means insects of the superfamily *Apoidea;* in particular, the honeybees, *Apis mellifera* (L). It includes all life stages of such insects, their genetic material, and dead remains.

(3) The term "beeyard" means a location or site where bees are located in hives.

(4) The term "Board" means the North Carolina Board of Agriculture.

(5) The term "Brazilian or African bee" means bees of the subspecies *Apis mellifera Adansonii* and their progeny.

(6) The term "colony" means one hive and its contents, including bees, comb, and appliances.

(7) The term "comb" includes all materials which are normally deposited into hives by bees. It does not include extracted honey or royal jelly, trapped pollen, and processed beeswax.

(8) The term "commercial beekeeper" means a beekeeper who owns or operates 200 or more colonies of bees, or a beekeeper who moves bees across state lines.

(9) The term "Commissioner" means the North Carolina Commissioner of Agriculture or his designated agents.

(10) The term "Department" means the North Carolina Department of Agriculture and Consumer Services.

(11) The term "disease" means any infectious disease, parasite, or pest that detrimentally affects bees.

(12) The term "disorder" means any disease, poisoning, pest, parasite, or predator damage, toxic substance injury, or undesirable trait or genetic strain of the bee that detrimentally affects bees or the bee and honey industry.

(13) The term "exposed" means having been in circumstances where the possibility of infection or damage by a disease or disorder occurred. Bees in an apiary where disease or disorder is present or where there has been an exchange of equipment with a diseased apiary may be considered exposed.

(14) The term "health certificate" means a statement issued by the State Entomologist certifying that bees or regulated articles are apparently free of disease or disorder based on an inspection or freedom from exposure to disease or disorder.

(15) The term "hive" means any receptacle or container, or part of receptacle or container, which is made or prepared for the use of bees, or which is inhabited by bees.

(16) The term "honey" means for the purpose of defining honey as a regulated article in the control of bee diseases or disorders, the natural food product made by the honeybees from the nectar of flowers, the saccharine exudation of plants, honeydew, sugar, corn syrup, or any other material along with any adulterants.

(17) The term "honeybees" means honey-producing insects of the genus *Apis*.

(18) The term "honeyflow" means the seasonal yielding of nectar by honey plants.

(19) The term "honey plants" means blooming plants from which bees gather nectar or pollen.

(20) The term "infested or infected" means showing symptoms of or having been exposed to the causal agent of a bee disease or disorder to such a degree that there is a possibility of the infected organisms or material transmitting the disease or disorder to other bees.

(21) The term "moveable frame hive" means any hive where the frames can be removed without damaging the comb.

(22) The term "permit" means an authorization to allow movement or other action involving bees or regulated articles.

(23) The term "regulated article" means any bees, bee equipment, comb, beeswax, honey, pollen, causal agents of disease, toxic substances, products of the hive, containers, and any other item regulated under this Article or pursuant regulations.

(24) The term "symptomless carrier" means to possess or bear a disease or disorder in a suppressed state having the potential for spreading the disease or disorder. (1977, c. 238, s. 2; 1997-261, s. 67.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" at the end of subdivision (10).

ARTICLE 56.

North Carolina Commercial Fertilizer Law.

§ 106-655. Short title.

CASE NOTES

Cited in Barber v. Continental Grain Co., 124 N.C. App. 310, 477 S.E. 2d 77 (1996).

§ 106-657. Definitions.

CASE NOTES

Official Sample. — Nitrogen content sample, which was obtained from a storage tank on plaintiffs' farm some time following delivery of nitrate solution, was not obtained from an approved source under the Commissioner's rule and did not comply with the manner approved by the Commissioner. Barber v. Continental Grain Co., 124 N.C. App. 310, 477 S.E. 2d 77 (1996).

§ 106-658. Enforcing official.

CASE NOTES

Cited in Barber v. Continental Grain Co., 124 N.C. App. 310, 477 S.E. 2d 77 (1996).

§ 106-662. Sampling, inspection and testing.

(a) It shall be the duty of the Commissioner to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this Article. The Commissioner is authorized with permission or under court warrant to enter upon any public or private premises during regular business hours or at any time business is being conducted therein in order to have access to commercial fertilizers subject to the provisions of this Article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner and for comparison with the guarantee supplied to the Commissioner in accordance with G.S. 106-660 and 106-661, the Commissioner, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. Portions shall be taken from containers as shown in the following table:

5 to 10 containers	all containers
11 to 20 containers	10 containers

21 to 40 containers	15 containers
above 40 containers	20 containers

Ten cores from bulk lots or as specified by the Association of Official Analytical Chemists (A.O.A.C.).

(2) A core sampler shall be used that removes a core from a bag or other container in a horizontal position from a corner to the diagonal corner at the other end of the package, and the cores taken shall be mixed, and if necessary, shall be reduced after thoroughly mixing, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provisions of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(3) The Board of Agriculture may modify the provisions of this subsection to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Analytical Chemists or by the Association of American Plant Food Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this Article in lieu of those prescribed in subdivisions (1) and (2) of this subsection.

(4) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise; provided, that any commercial fertilizer offered for sale, sold or distributed in bulk may be sampled in a manner approved by the Commissioner.

(5) The Commissioner shall refuse to analyze all samples except those taken under the provisions of this section and no sample, unless so taken, shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this Article.

(6) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture and Consumer Services, setting forth the analysis made by the chemist of the Department of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Analytical Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least 10 days before the report is submitted to the purchaser. If, during that period, no adequate evidence to the contrary is made available to the Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed for available plant food, if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or representative designated by either party together with two disinterested adult persons; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested adult persons; provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture and Consumer Services in taking samples and shall be drawn, mixed, and divided, as directed in subdivisions (1), (2), (3), and (4) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this Article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions

of this section does not conform to the provisions of this Article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are prohibited by the provisions of this Article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods or unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question, or a representative, agent or employee of the manufacturer, has violated any provisions of G.S. 106-663. (1947, c. 1086, s. 7; 1955, c. 354, s. 3; 1973, c. 1304, s. 1; 1977, c. 303, s. 8; 1981, c. 448, s. 8; 1997-261, ss. 68, 69.)

Effect of Amendments. — Session Laws 1997-261, ss. 68 and 69, effective July 1, 1997, in subdivision (b)(6) substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" preceding "setting forth the", and deleted "of Agriculture" preceding "of any sample"; and inserted "and Consumer Services" following "Department of Agriculture" in subdivision (e)(2).

CASE NOTES

Nitrogen content sample, which was obtained from a storage tank on plaintiffs' farm some time following delivery of nitrate solution, was not obtained from an approved source under the Commissioner's rule and did not comply with the manner approved by the Commissioner. Barber v. Continental Grain Co., 124 N.C. App. 310, 477 S.E. 2d 77 (1996).

§ 106-665. Plant food deficiency.

(a) The Commissioner, in determining for administrative purposes, whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (15) of G.S. 106-657, and as provided for in subsections (b), (c), and (d) of G.S. 106-662.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) For total nitrogen, available phosphate, or available potash: A penalty of three times the value of the deficiency if the deficiency is in excess of the following investigational allowances.

Guarantee Percentage	*Total Nitrogen*	*Available Phosphoric Acid*	*Soluble Potash Percentage*
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60

Guarantee Percentage	*Total Nitrogen*	*Available Phosphoric Acid*	*Soluble Potash Percentage*
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

Provided that when the found relative value of a sample is equal to or exceeds the guaranteed relative value, an overage in primary nutrients may compensate for a deficiency in another primary nutrient up to 10% of the guarantee of the deficient nutrient, not to exceed two units. No compensation shall be allowed toward a deficiency if the overage does not compensate for the entire amount of the deficiency or if the deficiency exceeds 10% of the guarantee or the deficiency exceeds two units. If more than one primary nutrient is in penalty status, no compensation shall be allowed.

(2) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (5%) (or 100 pounds of calcium carbonate equivalent per ton) from the guarantee, a penalty of fifty cents (50¢) per ton for each 50 pounds calcium carbonate equivalent, or fraction thereof in excess of the 100 pounds allowed, shall be assessed and paid as is prescribed in subsection (c) of this section.

(3) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent (10%) of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(4) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.15 of one percent on goods guaranteed up to and including five-tenths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(5) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.20 of one percent for goods guaranteed up to and including five-tenths percent; 0.25 of one percent for goods guaranteed from five-tenths to one percent; 0.30 of one percent

for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent up to four percent. Tolerances for goods guaranteed above four percent shall be the same as for total nitrogen.

(6) Total magnesium: If the magnesium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof.

(7) Total calcium: If the calcium content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed, a penalty of one dollar ($1.00) per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof.

(8) Sulfur: If the sulfur content is as much as 0.2 unit plus 5 percent of the guarantee below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of one dollar ($1.00) per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(9) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), G.S. 106-660 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner in fertilizer regulations.

(10) For micro-nutrients as are not specifically covered in this Article, a tolerance of twenty-five percent (25%) of the guarantee will be allowed for each element, not to exceed ½ unit (.5%) on guarantees up to 15 units or percent and not to exceed one unit (1%) on guarantees above 15 units or percent.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner; provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumer cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture and Consumer Services fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after 12 months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4; 1977, c. 303, s. 11; 1983, c. 146, s. 5; 1993, c. 216, s. 6; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (c).

§ 106-671. Inspection fees; reporting system.

(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture and Consumer Services a charge of twenty-five cents (25¢) per ton on all commercial fertilizers other than packages of five pounds or less. Inspection fees shall be paid on all tonnage distributed into North Carolina to any person not having a valid reporting permit. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton on any amount in excess of one hundred tons as provided herein. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System. — Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture and Consumer Services an inspection fee of twenty-five cents (25¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7; 1973, c. 611, s. 5; 1977, c. 303, s. 17; 1991, c. 98, s. 2; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" throughout the section.

§ 106-677. Grade-tonnage reports.

Each person registering commercial fertilizers under this Article shall furnish the Commissioner with a written statement of the tonnage of each grade of fertilizer sold by him in this State. This information shall be held in confidence by the Commissioner. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may suspend, revoke or terminate the registration of said commercial fertilizer and suspend, revoke or terminate the license of any person failing to comply with this section within 30 days of the close of each period. All information published by the Department of Agriculture and Consumer Services pursuant to this section shall be classified so as to prevent the identification of information received from individual registrants. All information received pursuant to this section shall be held confidential by the Department and its employees. (1947, c. 1086, s. 13; 1977, c. 303, s. 23; 1981, c. 448, s. 11; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

ARTICLE 57.

Nuisance Liability of Agricultural and Forestry Operations.

§ 106-700. Legislative determination and declaration of policy.

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

§ 106-701. When agricultural and forestry operation, etc., not constituted nuisance by changed conditions in locality.

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

ARTICLE 58.

North Carolina Biologics Law of 1981.

§ 106-708. Definitions.

For purposes of this Article, the following words, terms and phrases are defined as follows:

(1) "Animal" means all birds and mammals, other than man, to which biologics may be administered.

(2) "Biologics" means preparations made from living organisms and their products, including serums, vaccines, antigens and antitoxins which are used for the treatment or prevention of diseases in animals other than humans, or in the diagnosis of diseases.
(3) "Board" means the North Carolina Board of Agriculture.
(4) "Commissioner" means the Commissioner of Agriculture.
(5) "Department" means the Department of Agriculture and Consumer Services. (1981, c. 552, s. 1; 1997-261, s. 70.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (5).

ARTICLE 59.

Northeastern North Carolina Farmers Market Commission.

§ 106-720. Northeastern Farmers Market Commission established; membership.

(a) There is established the Northeastern North Carolina Farmers Market Commission. The Commission shall be located administratively in the Department of Agriculture and Consumer Services but shall exercise its exclusive powers and functions, herein granted, independently of the Commissioner of Agriculture and the Board of Agriculture.

(b) The Commission shall consist of nine members, as follows:
(1) The Commissioner of Agriculture;
(2) Four members appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121; and
(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section.

(c) Members of the Commission appointed by the General Assembly shall serve for staggered four-year terms. To achieve staggered terms, the initial terms of two members appointed by the General Assembly upon the recommendation of the President of the Senate and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for two years.

(d) The person designated by the General Assembly as chairman pursuant to subsection (b)(3) of this section shall call the organizational meeting of the Commission and shall serve as chairman until the Commission elects its own chairman. Thereafter, the Commission shall elect its own chairman who shall serve at the pleasure of the Commission.

(e) The Commission shall meet on a quarterly basis and otherwise upon the call of the chairman.

(f) Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6. (1985 (Reg. Sess., 1986), c. 1014, s. 158(a); 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (a).

ARTICLE 60.

Southeastern North Carolina Farmers Market Commission.

§ 106-727. Southeastern Farmers Market Commission established; membership.

(a) There is established the Southeastern North Carolina Farmers Market Commission. The Commission shall be located administratively in the Department of Agriculture and Consumer Services but shall exercise its exclusive powers and functions, herein granted, independently of the Commissioner of Agriculture and the Board of Agriculture.

(b) The Commission shall consist of nine members, as follows:

(1) The Commissioner of Agriculture;

(2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, one of whom shall be designated to serve as chairman as provided in subsection (d) of this section; and

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(c) Members of the Commission appointed by the General Assembly shall serve for staggered four-year terms. To achieve staggered terms, the initial terms of two members appointed by the General Assembly upon the recommendation of the President of the Senate and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be for two years.

(d) The person designated by the General Assembly as chairman pursuant to subsection (b)(2) of this section shall call the organizational meeting of the Commission and shall serve as chairman until the Commission elects its own chairman. Thereafter, the Commission shall elect its own chairman who shall serve at the pleasure of the Commission.

(e) The Commission shall meet on a quarterly basis and otherwise upon the call of the chairman.

(f) Members of the Commission who are not State officers or employees shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5. Members who are State officers or employees shall be reimbursed for travel and subsistence in accordance with G.S. 138-6. (1985 (Reg. Sess., 1986), c. 1014. s. 159(a); 1995, c. 490, s. 49; 1997-261, s. 109; 1997-456, s. 14.)

Effect of Amendments. — Session Laws 1997-261, s. 109, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture " in subsection (a).

Session Laws 1997-456, s. 14, effective August 29, 1997, deleted "of" preceding "of the Senate" in subdivision (b)(2).

ARTICLE 62.

Grape Growers Council.

§ 106-750. North Carolina Grape Growers Council — Creation; powers and duties.

There is created the North Carolina Grape Growers Council of the Department of Agriculture and Consumer Services. The North Carolina Grape Growers Council shall have the following powers and duties:

(1) To identify and implement methods for improving North Carolina's rank as a wine-producing State;

(2) To assure orderly growth and development of North Carolina's grape and wine industry;

(3) To achieve public awareness of the quality of North Carolina grapes and wine;

(4) To coordinate the interaction of North Carolina's grape and wine industry with other segments of the State's economy such as tourism, retail trade, and horticulture;

(5) To conduct methods of quality assurance of North Carolina's grape and wine industry to create a sound foundation for further growth;

(6) To assist in the coordination of the activities of the various State agencies and other organizations contributing to the development of the grape and wine industry;

(7) To receive and disburse funds;

(8) To enter into contracts for the purpose of developing new or improved markets or marketing methods for wine and grape products;

(9) To contract for research services to improve viticultural and enological practices in North Carolina;

(10) To enter into agreements with any local, state, or national organizations or agency engaged in education for the purpose of disseminating information on wine or other viticultural projects;

(11) To enter into contracts with commercial entities for the purpose of developing marketing, advertising, and other promotional programs designed to promote the orderly growth of the North Carolina grape and wine industry;

(12) To acquire any licenses or permits necessary for performance of the duties of the Council; and

(13) To develop a State Viticulture Plan that identifies problems and constraints of the viticultural industry, proposes solutions to those problems and delineates planning mechanisms for the orderly growth of the industry. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-751. North Carolina Grape Growers Council — Composition; terms; reimbursement.

(a) The North Carolina Grape Growers Council shall consist of 11 members appointed by the Commissioner of Agriculture in the following manner: seven commercial grape growers; three winery operators; and one retailer of North Carolina grape products. For purposes of this Article, a commercial grape grower is one who has at least three acres of grapes or sells ten thousand dollars ($10,000) worth of grapes annually. The Commissioner shall appoint, within 30 days of the effective date of this act, four members for three-year terms, four members for two-year terms, and three members for one-year terms. Thereafter, members shall be appointed for four-year terms and shall serve until their successors are appointed and qualified. Any member of the Council may be reappointed for additional terms. Any appointment to fill a vacancy on the Council shall be for the balance of the unexpired term. Any member of the Council may be removed by the Commissioner for misfeasance, malfeasance, or nonfeasance.

(b) Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 from funds appropriated for the operation of the Council.

(c) All clerical and other services required by the Council may be provided by the Department of Agriculture and Consumer Services.

(d) The Commissioner of Agriculture shall appoint a chairman who shall serve at the pleasure of the Commissioner.

(e) The Council may select a secretary who need not be a member of the Council.

(f) The Council shall meet when necessary as determined by the chairman or upon written request of a majority of the members.

(g) A majority of the Council shall constitute a quorum for the transaction of business. (1985 (Reg. Sess., 1986), c. 974, s. 1; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subsection (c).

Article 63.

Aquaculture Development Act.

§ 106-758. Definitions.

In addition to the definitions in G.S. 113-129, the following definitions shall apply as used in this Article,

(1) "Aquaculture" means the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching;

(2) "Aquaculture facility" means any land, structure or other appurtenance that is used for aquaculture, including, but

not limited to, any laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture;

(3) "Aquatic species" means any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, "fish" and "fishes" as defined in G.S. 113-129(7);

(4) "Commissioner" means the Commissioner of Agriculture;

(5) "Department" means the North Carolina Department of Agriculture and Consumer Services. (1989, c. 752, s. 147; 1993, c. 18, s. 1; 1997-261, s. 71.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (5).

§ 106-759. Lead agency; powers and duties.

(a) For the purposes of this Article, aquaculture is considered to be a form of agriculture and thus the Department of Agriculture and Consumer Services is designated as the lead State agency in matters pertaining to aquaculture.

(b) The Department shall have the following powers and duties:

(1) To provide aquaculturalists with information and assistance in obtaining permits related to aquacultural activities;

(2) To promote investment in aquaculture facilities in order to expand production and processing capacity; and

(3) To work with appropriate State and federal agencies to review, develop and implement policies and procedures to facilitate aquacultural development. (1989, c. 752, s. 147; 1997-261, s. 109.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture".

§ 106-760. Advisory Board.

(a) There is created within the Department of Agriculture and Consumer Services the Aquaculture Advisory Board, to consist of the following persons:

(1) The Commissioner of Agriculture, or his designee;

(2) The Secretary of Commerce, or his designee;

(3) The Secretary of Environment and Natural Resources, or his designee;

(4) The President of the North Carolina Biotechnology Center, or his designee;

(5) The President of the University of North Carolina, or his designee;

(6) One Senator designated by the President Pro Tempore of the Senate; and

(7) One Representative designated by the Speaker of the House of Representatives.

(b) The Commissioner of Agriculture or his designee shall serve as Chairman of the Board. A majority of the Board shall constitute a quorum for the transaction of business. Clerical and other assistance shall be provided by the Department of Agriculture and Consumer Services. The Commissioner may appoint advisory committees, pursuant to G.S. 143B-10(d), to assist the Board in carrying out its duties.

(c) The Board shall review State and federal policies, laws and regulations affecting aquaculture and recommend changes which may be necessary or useful to carry out the purposes of this Article. The Board shall present its recommendations to the Governor and the General Assembly. The Board shall also assist in the coordination of aquaculture-related activities of the various State agencies and institutions, and shall coordinate research and technology transfer activities to respond to the emerging requirements of aquaculture. (1989, c. 727, s. 223(c); c. 751, s. 9(c); c. 752, s. 147; 1991 (Reg. Sess., 1992), c. 959, s. 85; 1997-261, s. 72; 1997-443, s. 11A.119(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 72, effective July 1, 1997, in subsection (a) inserted "and Consumer Services" preceding "the Aquaculture Advisory"; and in subsection (b) substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" preceding "The Commissioner may".

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 106-761. Aquaculture facility registration and licensing.

(a) Authority. The North Carolina Department of Agriculture and Consumer Services shall regulate the production and sale of commercially raised freshwater fish and freshwater crustacean species. The Board of Agriculture shall promulgate rules for the registration of facilities for the production and sale of freshwater aquaculturally raised species. The Board may prescribe standards under which commercially reared fish may be transported, possessed, bought, and sold. The Department and Board of Agriculture authority shall be limited to commercially reared fish and shall not include authority over the wild fishery resource which is managed under the authority of the North Carolina Wildlife Resources Commission. The authority granted herein to regulate facilities licensed pursuant to this section does not authorize the Department of Agriculture or the Board of Agriculture to promulgate rules that (i) are inconsistent with rules adopted by any other State agency; or (ii) exempt such facilities from the rules adopted by any other State agency.

(b) Species subject to this section. The following species are exempt from special restrictions on introduction of exotic species promulgated by the Wildlife Resources Commission except to prevent disease. All other species are prohibited from propagation and production unless the applicant for the permit first obtains written permission from the Wildlife Resources Commission.

(1) Bluegill	Lepomis macrochirus
(2) Redear Sunfish	Lepomis microlophus
(3) Redbreast Sunfish	Lepomis auritus
(4) Green Sunfish	Lepomis cyanellus

(5) Any hybrids using above species of the genus	Lepomis
(6) Black Crappie	Pomoxis nigromaculatus
(7) White Crappie	Pomoxis annularis
(8) Largemouth Bass	Micropterus salmoides (northern strain)
(9) Smallmouth Bass	Micropterus dolomieui
(10) White Catfish	Ictalurus catus
(11) Channel Catfish	Ictalurus punctatus
(12) Golden Shiner	Notemigonus crysoleucas
(13) Fathead Minnow	Pimephales promelas
(14) Goldfish	Carassius auratus
(15) Rainbow Trout	Oncorhynchus mykiss
(16) Brown Trout	Salmo trutta
(17) Brook Trout	Salvelinus fontinalis
(18) Common Carp	Cyprinus carpio
(19) Crayfish	Procambarus species

(c) Exceptions for Species Not Listed. — The following fish species that are not listed in subsection (b) of this section may be produced and sold as if they were listed in that subsection with the following restrictions:

(1) Hybrid striped bass. — Production, propagation, and holding facilities in the Neuse, Roanoke, or Tar/Pamlico River basins for the hybrid striped bass shall comply with additional escapement prevention measures prescribed by the Wildlife Resources Commission.

(2) Yellow perch. — A letter of approval from the Wildlife Resources Commission is required before the yellow perch, perca flavenscens, may be raised at a facility located west of Interstate Highway 77.

(d) Aquaculture Propagation and Production Facility License. The Board of Agriculture may, by rule, authorize and license the operation of fish hatcheries and production facilities for species of fish listed in subsection (b) of this section. The Board may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be commercially reared, transported, possessed, bought, and sold. Aquaculture Propagation and Production Licenses issued by the Department shall be valid for a period of five years.

(e) Commercial Catchout Facility License.

(1) Commercial catchout facilities must be stocked exclusively with hatchery reared fish obtained from hatcheries approved by the Department to prevent the introduction of diseases. The Board of Agriculture may, by rule, prescribe standards of operation and conditions under which fish from such ponds may be taken, transported, possessed, bought, and sold.

(2) The Commercial Catchout Facility License shall be valid for a period of five years. A pond owner or operator licensed under this subsection shall be authorized to sell fish taken by fishermen from the pond to such fishermen. Fish sold at such facilities shall be limited to those fish covered under this section.

(3) The holder of the Catchout Facility License shall provide receipts to the purchasers of fish. The receipt shall describe the species, number, total weight, and the location of the catchout facility.

(4) No fish taken from a commercial catchout facility may be resold by the purchasing angler for any purpose.

(5) No fishing, special trout, or other license shall be required of anglers fishing in licensed commercial catchout facilities.

(f) Holding Pond/Tank Permit. All facilities holding live food or bait species for sale must obtain a Holding Pond/Tank Permit. Permits shall be valid for a period of two years and shall only authorize possession of fish specified in this section. All fish held live for sale shall be kept in accordance with rules promulgated by the Board of Agriculture. Possession of an Aquaculture Propagation and Production Facility or Commercial Catchout Facility License shall serve in lieu of a Holding Pond/Tank Permit for possession both on and off their facilities premises. No permit shall be required for holding lobsters for sale.

(g) Possession of species other than those listed in subsection (b) of this section or as authorized in writing by the Wildlife Resources Commission shall be a violation which shall result in the revocation of the Aquaculture Propagation and Production Facility or Commercial Catchout Facility License until such time that proper authorization is received from the Wildlife Resources Commission or the unauthorized species is removed from the facility. In the event of possession of unauthorized fish species, the Wildlife Resources Commission may take further regulatory action. The Department and the Wildlife Resources Commission shall have authority to enter the premises of such facilities to inspect for the possession of a species other than those authorized in subsection (b) of this section or authorized by written permission of the Wildlife Resources Commission.

(h) Nothing in this act shall apply to the aquarium or ornamental trade in fish. The Wildlife Resources Commission may by rule identify species for which possession in the State is prohibited. (1993, c. 18, s. 2; 1997-198, s. 1; 1997-261, ss. 73-76.)

Effect of Amendments. — Session Laws 1997-198, s. 1, effective June 19, 1997, rewrote subsection (c).

Session Laws 1997-261, ss. 73 through 76, effective July 1, 1997, in subsection (a) inserted "and Consumer Services" preceding "shall regulate the", and deleted "of Agriculture" preceding "and Board of"; substituted "Department" for "North Carolina Department of Agriculture" in subsection (d); deleted "of Agriculture" following "Department" in subdivision (e)(1); and deleted "of Agriculture" following "The Department" in the second sentence of subsection (g).

§ 106-762. Fish disease management.

(a) The North Carolina Department of Agriculture and Consumer Services shall, with the assistance of the Wildlife Resources Commission, develop and implement a fish disease management plan to prevent the introduction of fish diseases through aquaculture facilities subject to the provisions and duly adopted rules of this section into the State.

(b) Release of fish. It shall be unlawful to willfully release domestically raised fish into the waters of the State, other than in private ponds as defined by G.S. 113-129, without written permission of the Wildlife Resources Commission, or the Division of Marine Fisheries of the Department of Environment and Natural Resources. (1993, c. 18, s. 2; 1997-261, s. 77; 1997-443, s. 11A.119(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — Session Laws 1997-261, s. 77, effective July 1, 1997, added "and Consumer Services" preceding "with the assistance" in subsection (a).

Session Laws 1997-443, s. 11A.119(a), amendment, effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

§ 106-763.1. Propagation and production of American alligators.

(a) License Required. — A person who intends to raise American alligators commercially must first obtain an Aquaculture Propagation and Production Facility License from the Department. The Board of Agriculture may regulate a facility that raises American alligators to the same extent that it can regulate any other facility licensed under this Article.

(b) Requirements. — A facility that raises American alligators commercially must comply with all of the following requirements:

(1) Before a facility begins operation, it must prepare and implement a confinement plan. After a facility begins operation, it must adhere to the confinement plan. A confinement plan must comply with guidelines developed and adopted by the Wildlife Resources Commission. The Department may inspect a facility to determine if the facility is complying with the confinement plan. As used in this subdivision, "confinement" includes production within a building or similar structure and a perimeter fence.

(2) A facility can possess only hatchlings that have been permanently tagged and have an export permit from their state of origin. The facility must keep records of all hatchlings it receives and must make these records available for inspection by the Wildlife Resources Commission and the Department upon request.

(3) If the facility uses swine, poultry, or other livestock for feed, it must have a disease management plan that has been approved by the State Veterinarian, and it must comply with the plan.

(4) The activities of the facility must comply with the Endangered Species Act and the Convention on International Trade in Endangered Species. The Department is the State agency responsible for the administration of this program for farm-raised alligators.

(c) Sanctions. — The operator of a facility that possesses an untagged or undocumented alligator commits a Class H felony if the operator knows the alligator is untagged or undocumented. Conviction of an operator of a facility under this section revokes the license of the facility for five years beginning on the date of the conviction. An operator convicted under this section may not be the operator of any other facility required to be licensed under this Article for five years beginning on the date of the conviction. (1997-198, s. 2.)

Editor's Note. — Session Laws 1997-198, s. 3, made this section effective June 19, 1997.

ARTICLE 65.

Strawberry Assessment Act.

§ 106-783. Definitions.

As used in this Article:

(1) "Association" means the North Carolina Strawberry Association, Inc.

(2) "Commercial production" means the production of strawberries for sale.

(3) "Department" means the North Carolina Department of Agriculture and Consumer Services.

(4) "Strawberry plant seller" means a person who sells strawberry plants to growers for commercial production of strawberries. (1989 (Reg. Sess., 1990), c. 1027, s. 1; 1997-261, s. 78; 1997-371, s. 2.)

Effect of Amendments. — Session Laws 1997-261, s. 78, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (3).

Session Laws 1997-371, s. 2, effective August 6, 1997, added subdivision (4).

§ 106-785. Two-thirds vote required; collection of assessment; penalties; audits.

(a) The assessment shall not be collected unless at least two-thirds of the votes cast in the referendum are in favor of the assessment. If at least two-thirds of the votes cast in the referendum are in favor of the assessment, then the Department shall notify all strawberry plant sellers of the assessment. The assessment shall be added by the strawberry plant sellers to the price of all strawberry plants sold for commercial planting in North Carolina. The Department shall provide forms to the strawberry plant sellers for reporting the assessment. All strawberry plant sellers shall provide each purchaser of strawberry plants for commercial production with an invoice that sets forth the amount of the assessment on the purchase covered by the invoice. Persons who purchase strawberry plants for commercial production on which the assessment has not been collected by the seller shall report such purchases and pay the assessment to the Department.

(b) Each strawberry plant seller shall remit to the Department no later than the tenth day following the end of each calendar quarter the assessment on strawberry plants sold during that quarter. Any strawberry plant seller who fails to remit the assessment for the previous year's sales by January 10 shall pay a penalty of five percent (5%) of the unpaid assessment plus a penalty of one percent (1%) of the unpaid assessment for each month after January 10 that the assessment remains unpaid.

(c) The Association may conduct inspections or audits of the books of any strawberry plant seller. If the inspection or audit reveals that a strawberry plant seller has willfully failed to remit assessments when due, the seller shall pay the Association the reasonable costs of the inspection or audit.

(d) The Association may bring an action to collect unpaid assessments, penalties, and reasonable costs of any inspection or audit as provided in subsection (c) of this section, against any strawberry plant seller who fails to pay the assessment, penalties, or costs. If successful, the Association shall also recover the cost of such action, including attorneys' fees. (1989 (Reg. Sess., 1990), c. 1027, s. 1; 1997-371, s. 3.)

Effect of Amendments. — The 1997 amendment, effective October 1, 1997, and applicable to assessments accruing on or after that date, added "penalties; audits" in the catchline; rewrote subsections (a) and (b); and added subsections (c) and (d).

ARTICLE 66.

Pork Promotion Assessment Act.

§ 106-792. Definitions.

The following definitions apply in this Article:

(1) Association. — The North Carolina Pork Producers Association, Inc., a North Carolina nonprofit corporation.
(2) Buyer. — Any person engaged as (i) a commission merchant, (ii) an auction market, or (iii) a livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a pork producer.
(3) Department. — The North Carolina Department of Agriculture and Consumer Services.
(4) Market. — To sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.
(5) Person. — An individual, a partnership, a firm, or a corporation.
(6) Porcine animal. — Swine raised for seed stock, market hogs, or slaughter.
(7) Pork producer. — A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in pork production, and (iii) is actively involved in the production of porcine animals. (1991, c. 605, s. 1; 1997-261, s. 79.)

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, substituted "Department of Agriculture and Consumer Services" for "Department of Agriculture" in subdivision (3).

ARTICLE 67.

Swine Farms.

§ 106-800. Title.

This Article shall be known as the "Swine Farm Siting Act". (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

Cross References. — As to moratorium on construction or expansion of swine farms, see notes under § 143-215.10A.

Editor's Note. — Session Laws 1995, c. 420, s. 2, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 8, provides: "This act applies to the construction or enlargement, on or after October 1, 1995, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm. This act does not apply under each of the following circumstances:

"(1) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to that set forth as the projected population in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995.

"(2) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of increasing the swine population to the population that the animal waste management system is designed to accommodate as that system is set forth in a registration of the swine operation filed with the Department of Environment, Health, and Natural Resources before October 1, 1995, or as that system is set forth in an animal waste management plan approved before October 1, 1995.

"(3) When the construction or enlargement occurs on or after October 1, 1995, for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population."

Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 7(b), provides: "Subsection (a) of this section does not repeal any rule that does not conflict with the amendments to Article 67 of Chapter 106 of the General Statutes made by subsection (a) of this section."

Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 11, provides that the Division of Soil and Water Conservation of the Department of Environment, Health, and Natural Resources, the Cooperative Extension Service of North Carolina State University, and North Carolina Department of Agriculture shall prepare a coordinated and comprehensive plan for nonpoint source pollution prevention and control, and that the comprehensive plan shall be reported to the Senate Select Committee on River Water Quality and Fish Kills and the Environmental Review Commission by September 30, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 12, provides: "The Environmental Review Commission shall evaluate the animal waste permitting, inspection, and enforcement program established under Section 1 of this act including, whether to transfer responsibility for permitting, compliance inspections, and enforcement to the Division of Soil and Water Conservation. The Commission may report its findings and recommendations to the General Assembly on or before the first day of the 1997 Regular Session and shall report its findings and recommendations on or before the first day of the 1998 Regular Session."

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 7(a), effective June 21, 1996, appears to have made no changes to this section.

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

§ 106-801. Purpose.

The General Assembly finds that certain limitations on the siting of swine houses and lagoons for swine farms can assist in the development of pork production, which contributes to the economic development of the State, by lessening the interference with the use and enjoyment of adjoining property. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "certain limitations on" following "finds that"; substituted "swine" for "larger" following "lagoons for"; substituted "production, which contributes" for "production to contribute" following "development of pork"; and substituted "State, by lessening the" for "State while minimizing any" following "development of the".

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

§ 106-802. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Lagoon" means a confined body of water to hold animal byproducts including bodily waste from animals or a mixture of waste with feed, bedding, litter or other agricultural materials.

(2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 626, s. 7, effective June 21, 1996.

(3) "Occupied residence" means a dwelling actually inhabited by a person on a continuous basis as exemplified by a person living in his or her home.

(3a) "Outdoor recreational facility" means any plot or tract of land on which there is located an outdoor swimming pool, tennis court, or golf course that is open to either the general public or to the members and guests of any organization having 50 or more members.

(4) "Site evaluation" means an investigation to determine if a site meets all federal and State standards as evidenced by the Waste Management Facility Site Evaluation Report on file with the Soil and Water Conservation District office or a comparable report certified by a professional engineer or a comparable report certified by a technical specialist approved by the North Carolina Soil and Water Conservation Commission.

(5) "Swine farm" means a tract of land devoted to raising 250 or more animals of the porcine species.

(6) "Swine house" means a building that shelters porcine animals on a continuous basis. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); c. 743, s. 3; 1997-443, s. 11A.119(a); 1997-456, s. 15; 1997-458, s. 4.1; 1997-496, s. 12.)

Editor's Note. — This section was amended by Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 7(a), and by Session Laws 1995 (Reg. Sess., 1996), c. 743, s. 3, in the coded bill drafting format provided by § 120-20.1. It has been set out in the form above at the direction of the Revisor of Statutes.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-458, s. 13.3, contains a severability clause.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 7(a), effective June 21, 1996, deleted "without discharge to surface waters of the State except in the event of a storm more severe than the 25 year, 24 hour storm" preceding "materials" in subdivision (1); deleted subdivision (2), which defined "new swine farm"; inserted "or her" following "living in his" in subdivision (3); and, in subdivision (4), deleted "'Siting or'" preceding "'Site evaluation'", substituted "Soil and Water Conservation District office" for "Natural Resources Conservation Service", deleted "and either of which report provides the basis for certification by the Division of Environmental Management pursuant to the rules appearing in the North Carolina Administrative Code governing waste not discharged to surface waters", and made stylistic changes.

Session Laws 1995 (Reg. Sess., 1996), c. 743, s. 3, effective July 1, 1996, substituted "Department of Environment, Health, and Natural Resources" for "Division of Environmental Management" in subdivision (4).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Session Laws 1997-456, s. 15, effective

August 29, 1997, deleted "Department of Environment, Health and Natural Resources" following subdivision (4).

Session Laws 1997-458, s. 4.1, effective August 27, 1997, added subdivision (3a) and deleted "Department of Environment, Health and Natural Resources" following subdivision (4).

Session Laws 1997-496, s. 12, effective September 11, 1997, deleted "Department of Environment, Health and Natural Resources" at the end of subdivision (4).

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

§ 106-803. Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms.

(a) A swine house or a lagoon that is a component of a swine farm shall be located:

(1) At least 1,500 feet from any occupied residence.

(2) At least 2,500 feet from any school; hospital; church; outdoor recreational facility; national park; State Park, as defined in G.S. 113-44.9; historic property acquired by the State pursuant to G.S. 121-9 or listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1; or child care center, as defined in G.S. 110-86, that is licensed under Article 7 of Chapter 110 of the General Statutes.

(3) At least 500 feet from any property boundary.

(4) At least 500 feet from any well supplying water to a public water system, as defined in G.S. 130A-313.

(5) At least 500 feet from any other well that supplies water for human consumption. This subdivision does not apply to a well located on the same parcel or tract of land on which the swine house or lagoon is located and that supplies water only for use on that parcel or tract of land or for use on adjacent parcels or tracts of land all of which are under common ownership or control.

(a1) The outer perimeter of the land area onto which waste is applied from a lagoon that is a component of a swine farm shall be at least 75 feet from any boundary of property on which an occupied residence is located and from any perennial stream or river, other than an irrigation ditch or canal.

(a2) No component of a liquid animal waste management system for which a permit is required under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes, other than a land application site, shall be constructed on land that is located within the 100-year floodplain.

(b) A swine house or a lagoon that is a component of a swine farm may be located closer to a residence, school, hospital, church, or a property boundary than is allowed under subsection (a) of this section if written permission is given by the owner of the property and recorded with the Register of Deeds. (1995, c. 420, s. 1; 1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

Editor's Note. — As to application of Session Laws 1995, c. 420, s. 2, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 8, to the construction or enlargement on or after October 1, 1995, of swine houses, lagoons, and land areas onto which waste is applied from a lagoon that are components of a swine farm, see the editor's note under § 106-800.

Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 24, provides that the amendment by Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 7, is effective upon ratification, except that the change from 100 to 500 feet made in subsection (a) of this section does not apply to a swine farm for which a site evaluation was conducted prior to October 1, 1996.

Session Laws 1997-458, s. 4.2, provides: "The amendments to subsections (a) and (a1) of G.S. 106-803 made by Section 4.1 of this act and G.S. 106-803(a2), added to G.S. 106-803 by Section 4.1 of this act, apply to any new liquid animal waste management system for which construction commences on or after the date this act becomes law and to any expansion of an existing liquid animal waste management system for which construction commences on or after the date this act becomes law."

Session Laws 1997-458, s. 13.3, contains a severability clause.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, except that the change from 100 to 500 made in subsection (a) does not apply to a swine farm for which a site evaluation was conducted prior to October 1, 1996, substituted "Siting requirements for swine houses, lagoons, and land areas onto which waste is applied at swine farms" for "Requirements for siting swine houses and lagoons" in the catchline; in subsection (a), substituted "500" for "100" in the first sentence, and substituted "boundary of property on which an occupied residence is located" for "residential property boundary" in the second sentence; and substituted "located" for "sited" following "swine farm may be" in subsection (b).

The 1997 amendment, effective August 29, 1997, designated the last sentence of former subsection (a) as present subsection (a1) and substituted "75 feet" for "50 feet" in subsection (a1); rewrote present subsection (a); and added subsection (a2).

Legal Periodicals. — For comment, "The Eight Million Little Pigs — A Cautionary Tale: Statutory and Regulatory Responses to Concentrated Hog Farming," see 31 Wake Forest L. Rev. 851 (1996).

§ 106-804. Enforcement.

(a) Any person who owns property directly affected by the siting requirements of G.S. 106-803 pursuant to subsection (b) of this section may bring a civil action against the owner or operator of a swine farm who has violated G.S. 106-803 and may seek any one or more of the following:

(1) Injunctive relief.
(2) An order enforcing the siting requirements under G.S. 106-803.
(3) Damages caused by the violation.

(b) A person is directly affected by the siting requirements of G.S. 106-803 only if the person owns a facility or property located within the siting requirements specified under G.S. 106-803.

(c) If the court determines it is appropriate, the court may award court costs, including reasonable attorneys" fees and expert witnesses" fees, to any party. If a temporary restraining order or preliminary injunction is sought, the court may require the filing of a bond or equivalent security. The court shall determine the amount of the bond or security.

(d) Nothing in this section shall restrict any other right that any person may have under any statute or common law to seek injunctive or other relief. (1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1997-458, s. 4.1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 24, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1997-458, s. 13.3, contains a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 27, 1997, in the introductory language of subsection (a) substituted "who owns" for "owning" and "the owner or operator of a swine farm" for "a swine farmer"; and rewrote subsection (b).

§ 106-805. Written notice of swine farms.

Any person who intends to construct a swine farm whose animal waste management system is subject to a permit under Part 1 or 1A of Article 21 of Chapter 143 of the General Statutes shall, after completing a site evaluation and before the farm site is modified, notify all adjoining property owners; all property owners who own property located across a public road, street, or highway from the swine farm; the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site of that person's intent to construct the swine farm. This notice shall be by certified mail sent to the address on record at the property tax office in the county in which the land is located. Notice to a county shall be sent to the county manager or, if there is no county manager, to the chair of the board of county commissioners. Notice to a local health department shall be sent to the local health director. The written notice shall include all of the following:

(1) The name and address of the person intending to construct a swine farm.
(2) The type of swine farm and the design capacity of the animal waste management system.
(3) The name and address of the technical specialist preparing the waste management plan.
(4) The address of the local Soil and Water Conservation District office.
(5) Information informing the adjoining property owners and the property owners who own property located across a public road, street, or highway from the swine farm that they may submit written comments to the Division of Water Quality, Department of Environment and Natural Resources. (1995 (Reg. Sess., 1996), c. 626, s. 7(a); 1996, 2nd Ex. Sess., c. 18, s. 27.34(d); 1997-443, s. 11A.119(a); 1997-458, s. 4.1.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 626, s. 24, made this section effective upon ratification. The Act was ratified June 21, 1996.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Session Laws 1997-458, s. 13.3, contains a severability clause.

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 18, s. 27.34(d), effective July 1, 1996, substituted "Division of Water Quality" for "Division of Environmental Management" in subdivision (5).

Session Laws 1997-443, s. 11A.119(a), effective August 28, 1997, substituted "Environment and Natural Resources" for "Environment, Health, and Natural Resources."

Session Laws 1997-458, s. 4.1, effective August 27, 1997, in the introductory language, in the first sentence substituted "Part 1 or 1A" for "Part 1A", deleted "attempt to" preceding "notify", deleted "and" following "notify all adjoining property owners", inserted "the county or counties in which the farm site is located; and the local health department or departments having jurisdiction over the farm site", and made minor punctuation changes; and inserted the third and fourth sentences.

ARTICLE 68.

Southern Dairy Compact.

§ 106-810. Southern Dairy Compact entered into; form of Compact.

The Southern Dairy Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Statement of Purpose, Findings, and Declaration of Policy

§ 1. Statement of purpose, findings, and declaration of policy.

The purpose of this compact is to recognize the interstate character of the southern dairy industry and the prerogative of the states under the United States Constitution to form an interstate commission for the southern region. The mission of the Commission is to take such steps as are necessary to assure the continued viability of dairy farming in the South, and to assure consumers of an adequate, local supply of pure and wholesome milk.

The participating states find and declare that the dairy industry is an essential agricultural activity of the South. Dairy farms, and associated suppliers, marketers, processors, and retailers, are an integral component of the region's economy. Their ability to provide a stable, local supply of pure, wholesome milk is a matter of great importance to the health and welfare of the region.

The participating states further find that dairy farms are essential, and they are an integral part of the region's rural communities. The farms preserve land for agricultural purposes and provide needed economic stimuli for rural communities.

By entering into this compact, the participating states affirm that their ability to regulate the price that southern dairy farmers receive for their product is essential to the public interest. Assurance of a fair and equitable price for dairy farmers ensures their ability to provide milk to the market and the vitality of the southern dairy industry, with all the associated benefits.

Recent dramatic price fluctuations, with a pronounced downward trend, threaten the viability and stability of the southern dairy region. Historically, individual state regulatory action had been an effective emergency remedy available to farmers confronting a distressed market. The system of federal orders, implemented by the Agricultural Marketing Agreement Act of 1937, establishes only minimum prices paid to producers for raw milk, without preempting the power of states to regulate milk prices above the minimum levels so established.

In today's regional dairy marketplace, cooperative, rather than individual state action is needed to more effectively address the market disarray. Under our constitutional system, properly authorized states acting cooperatively may exercise more power to regulate interstate commerce than they may assert individually without such authority. For this reason, the participating states invoke their authority to act in common agreement, with the consent of Congress, under the compact clause of the Constitution.

In establishing their constitutional regulatory authority over the region's fluid milk market by this compact, the participating states declare their purpose that this compact neither displace the system of federal orders nor encourage the merging of federal orders. Specific provisions of the compact itself set forth this basic principle.

Designed as a flexible mechanism able to adjust to changes in a regulated marketplace, the compact also contains a contingency provision should the system of federal orders be discontinued. In that event, the interstate commission may regulate the marketplace in lieu of the system of federal orders. This contingent authority does not anticipate such a change, however, and should not be so construed. It is only provided should developments in the market other than establishment of this compact result in discontinuance of the system of federal orders.

ARTICLE II. Definitions and Rules of Construction

§ 2. Definitions.

For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(1) "Class I milk" means milk disposed of in fluid form or as a fluid milk product, subject to further definition in accordance with the principles expressed in subsection (b) of Section 3.

(2) "Commission" means the Southern Dairy Compact Commission established by this compact.

(3) "Commission marketing order" means regulations adopted by the Commission pursuant to Sections 9 and 10 of this compact in place of a terminated federal marketing order or state dairy regulation. Such order may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission. Such order may establish minimum prices for any or all classes of milk.

(4) "Compact" means this interstate compact.

(5) "Compact over-order price" means a minimum price required to be paid to producers for Class I milk established by the Commission in regulations adopted pursuant to Sections 9 and 10 of this compact, which is above the price established in federal marketing orders or by state farm price regulation in the regulated area. Such price may apply throughout the region or in any part or parts thereof as defined in the regulations of the Commission.

(6) "Milk" means the lacteal secretion of cows and includes all skim, butterfat, or other constituents obtained from separation or any other process. The term is used in its broadest sense and may be further defined by the Commission for regulatory purposes.

(7) "Partially regulated plant" means a milk plant not located in a regulated area but having Class I distribution within such area. Commission regulations may exempt plants having such distribution or receipts in amounts less than the limits defined therein.

(8) "Participating state" means a state which has become a party to this compact by the enactment of concurring legislation.

(9) "Pool plant" means any milk plant located in a regulated area.

(10) "Region" means the territorial limits of the states which are parties to this compact.

(11) "Regulated area" means any area within the region governed by and defined in regulations establishing a compact over-order price or commission marketing order.

(12) "State dairy regulation" means any state regulation of dairy prices and associated assessments, whether by statute, marketing order, or otherwise.

§ 3. Rules of construction.

(a) This compact shall not be construed to displace existing federal milk marketing orders or state dairy regulation in the region but to supplement them. In the event some or all federal orders in the region are discontinued, the compact shall be construed to provide the Commission the option to replace them with one or more commission marketing orders pursuant to this compact.

(b) This compact shall be construed liberally in order to achieve the purposes and intent enunciated in Section 1. It is the intent of this compact to establish a basic structure by which the Commission may achieve those purposes through the application, adaptation, and development of the regulatory techniques historically associated with milk marketing and to afford the Commission broad flexibility to devise regulatory mechanisms to achieve the purposes of this compact. In accordance with this intent, the technical terms which are associated with market order regulation and which have acquired commonly understood general meanings are not defined herein but the Commission may further define the terms used in this compact and develop additional concepts and define additional terms as it may find appropriate to achieve its purposes.

ARTICLE III. Commission Established

§ 4. Commission established.

There is hereby created a commission to administer the compact, composed of delegations from each state in the region. The Commission shall be known as the Southern Dairy Compact Commission. A delegation shall include not less than three nor more than five persons. Each delegation shall include at least one dairy farmer who is engaged in the production of milk at the time of appointment or reappointment, and one consumer representative. Delegation members shall be residents and voters of, and subject to such confirmation process as is provided for in, the appointing state. Delegation members shall serve no more than three consecutive terms with no single term of more than four years, and be subject to removal for cause. In all other respects, delegation members shall serve in accordance with the laws of the state represented. The compensation, if any, of the members of a state delegation shall be determined and paid by each state, but their expenses shall be paid by the Commission.

5. Voting requirements.

All actions taken by the Commission, except for the establishment or termination of an over-order price or commission marketing order, and the adoption, amendment, or rescission of the Commission's bylaws, shall be by majority vote of the delegations present. Each state delegation shall be entitled to one vote in the conduct of the Commission's affairs. Establishment or termination of an over-order price or commission marketing order shall require at least a two-thirds vote of the delegations present. The establishment of a regulated area that covers all or part of a participating state shall require also the affirmative vote of that state's delegation. A majority of the delegations from the participating states shall constitute a quorum for the conduct of the Commission's business.

§ 6. Administration and management.

(a) The Commission shall elect annually from among the members of the participating state delegations a chairperson, a vice-chairperson, and a treasurer. The Commission shall appoint an executive director and fix his or her duties and compensation. The executive director shall serve at the pleasure of the Commission, and, together with the treasurer, shall be bonded in an amount determined by the Commission. The Commission may establish through its bylaws an executive committee composed of one member elected by each delegation.

(b) The Commission shall adopt bylaws for the conduct of its business by a two-thirds vote and shall have the power by the same vote to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form with the appropriate agency or officer in each of the participating states. The bylaws shall provide for appropriate notice to the delegations of all Commission meetings and hearings and of the business to be transacted at such meetings or hearings. Notice also shall be given to other agencies or officers of participating states as provided by the laws of those states.

(c) The Commission shall file an annual report with the Secretary of Agriculture of the United States, and with each of the participating states by submitting copies to the Governor, both houses of the legislature, and the head of the state department having responsibilities for agriculture.

(d) In addition to the powers and duties elsewhere prescribed in this compact, the Commission may engage in all of the following:

(1) Sue and be sued in any state or federal court.

(2) Have a seal and alter the same at pleasure.

(3) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or other similar manner, for its corporate purposes.

(4) Borrow money and to issue notes, to provide for the rights of the holders thereof, and to pledge the revenue of the Commission as security therefor, subject to the provisions of Section 18 of this compact.

(5) Appoint such officers, agents, and employees as it may deem necessary, prescribe their powers, duties, and qualifications.

(6) Create and abolish such offices, employments, and positions as it deems necessary for the purposes of the compact and provide for the removal, term, tenure, compensation, fringe benefits, pension, and retirement rights of its officers and employees.

(7) Retain personal services on a contract basis.

§ 7. Rule-making power.

In addition to the power to promulgate a compact over-order price or commission marketing orders as provided by this compact, the Commission is further empowered to make and enforce such additional rules and regulations as it deems necessary to implement any provisions of this compact, or to effectuate in any other respect the purposes of this compact.

ARTICLE IV. Powers of the Commission

§ 8. Powers to promote regulatory uniformity, simplicity, and interstate cooperation.

The Commission may:

(1) Investigate or provide for investigations or research projects designed to review the existing laws and regulations of the

participating states, to consider their administration and costs, to measure their impact on the production and marketing of milk and their effects on the shipment of milk and milk products within the region.

(2) Study and recommend to the participating states joint or cooperative programs for the administration of the dairy marketing laws and regulations and to prepare estimates of cost savings and benefits of such programs.

(3) Encourage the harmonious relationships between the various elements in the industry for the solution of their material problems. Conduct symposia or conferences designed to improve industry relations, or a better understanding of problems.

(4) Prepare and release periodic reports on activities and results of the Commission's efforts to the participating states.

(5) Review the existing marketing system for milk and milk products and recommend changes in the existing structure for assembly and distribution of milk which may assist, improve, or promote more efficient assembly and distribution of milk.

(6) Investigate costs and charges for producing, hauling, handling, processing, distributing, selling, and for all other services, performed with respect to milk.

(7) Examine current economic forces affecting producers, probable trends in production and consumption, the level of dairy farm prices in relation to costs, the financial conditions of dairy farmers, and the need for an emergency order to relieve critical conditions on dairy farms.

§ **9. Equitable farm prices.**

(a) The powers granted in this section and Section 10 shall apply only to the establishment of a compact over-order price, so long as federal milk marketing orders remain in effect in the region. In the event that any or all such orders are terminated, this Article authorizes the Commission to establish one or more commission marketing orders, as herein provided, in the region or parts thereof as defined in the order.

(b) A compact over-order price established pursuant to this section shall apply only to Class I milk. Such compact over-order price shall not exceed one dollar and fifty cents ($1.50) per gallon at Atlanta, Georgia, however, this compact over-order price shall be adjusted upward or downward at other locations in the region to reflect differences in minimum federal order prices. Beginning in 1990, and using that year as a base, the foregoing one dollar and fifty cents ($1.50) per gallon maximum shall be adjusted annually by the rate of change in the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor. For purposes of the pooling and equalization of an over-order price, the value of milk used in other use classifications shall be calculated at the appropriate class price established pursuant to the applicable federal order or state dairy regulation and the value of unregulated milk shall be calculated in relation to the nearest prevailing class price in accordance with and subject to such adjustments as the Commission may prescribe in regulations.

(c) A commission marketing order shall apply to all classes and uses of milk.

(d) The Commission may establish a compact over-order price for milk to be paid by pool plants and partially regulated plants. The Commission also may establish a compact over-order price to be paid by all other handlers receiving milk from producers located in a regulated area. This price shall be established either as a compact over-order price or by one or more commission marketing orders. Whenever such a price has been established by either type of regulation, the legal obligation to pay such price shall be determined solely by the terms and purpose of the regulation without regard to the situs of the transfer of title, possession, or any other factors not related to the purposes of the regulation and this compact. Producer-handlers as defined in an applicable federal market order shall not be subject to a compact over-order price. The Commission shall provide for similar treatment of producer-handlers under commission marketing orders.

(e) In determining the price, the Commission shall consider the balance between production and consumption of milk and milk products in the regulated area, the costs of production including, but not limited to, the price of feed, the cost of labor including the reasonable value of the producer's own labor and management, machinery expense and interest expense, the prevailing price for milk outside the regulated area, the purchasing power of the public, and the price necessary to yield a reasonable return to the producer and distributor.

(f) When establishing a compact over-order price, the Commission shall take such other action as is necessary and feasible to help ensure that the over-order price does not cause or compensate producers so as to generate local production of milk in excess of those quantities necessary to assure consumers of an adequate supply for fluid purposes.

(g) The Commission shall whenever possible enter into agreements with state or federal agencies for exchange of information or services for the purpose of reducing regulatory burden and cost of administering the compact. The Commission may reimburse other agencies for the reasonable cost of providing these services.

§ 10. Optional provisions for pricing order.

Regulations establishing a compact over-order price or a commission marketing order may contain, but shall not be limited to, any of the following:

(1) Provisions classifying milk in accordance with the form in which or purpose for which it is used, or creating a flat pricing program.

(2) With respect to a commission marketing order only, provisions establishing or providing a method for establishing separate minimum prices for each use classification prescribed by the Commission, or a single minimum price for milk purchased from producers or associations of producers.

(3) With respect to an over-order minimum price, provisions establishing or providing a method for establishing such minimum price for Class I milk.

(4) Provisions for establishing either an over-order price or a commission marketing order may make use of any reasonable method for establishing such price or prices including flat pricing and formula pricing. Provision may also be made for location adjustments, zone differentials, and com-

petitive credits with respect to regulated handlers who market outside the regulated area.

(5) Provisions for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered, or for the payment of producers delivering milk to the same handler of uniform prices for all milk delivered by them.

a. With respect to regulations establishing a compact over-order price, the Commission may establish one equalization pool within the regulated area for the sole purpose of equalizing returns to producers throughout the regulated area.

b. With respect to any commission marketing order, as defined in Section 2, subdivision (9), which replaces one or more terminated federal orders or state dairy regulation, the marketing area of now separate state or federal orders shall not be merged without the affirmative consent of each state, voting through its delegation, which is partly or wholly included within any such new marketing area.

(6) Provisions requiring persons who bring Class I milk into the regulated area to make compensatory payments with respect to all such milk to the extent necessary to equalize the cost of milk purchased by handlers subject to a compact over-order price or commission marketing order. No such provisions shall discriminate against milk producers outside the regulated area. The provisions for compensatory payments may require payment of the difference between the Class I price required to be paid for such milk in the state of production by a federal milk marketing order or state dairy regulation and the Class I price established by the compact over-order price or commission marketing order.

(7) Provisions specially governing the pricing and pooling of milk handled by partially regulated plants.

(8) Provisions requiring that the account of any person regulated under the compact over-order price shall be adjusted for any payments made to or received by such persons with respect to a producer settlement fund of any federal or state milk marketing order or other state dairy regulation within the regulated area.

(9) Provision requiring the payment by handlers of an assessment to cover the costs of the administration and enforcement of such order pursuant to subsection (a) of Section 18 of Article VII.

(10) Provisions for reimbursement to participants of the Women, Infants and Children Special Supplemental Food Program of the United States Child Nutrition Act of 1966.

(11) Other provisions and requirements as the Commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers.

ARTICLE V. Rule-Making Procedure

§ 11. Rule-making procedure.

Before promulgation of any regulations establishing a compact over-order price or commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, or amendment thereof, as provided in Article IV, the Commission shall conduct an informal rule-making proceeding to provide interested persons with an opportunity to present data and views. Such rule-making proceeding shall be governed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553). In addition, the Commission shall, to the extent practicable, publish notice of rule-making proceedings in the official register of each participating state. Before the initial adoption of regulations establishing a compact over-order price or a commission marketing order and thereafter before any amendment with regard to prices or assessments, the Commission shall hold a public hearing. The Commission may commence a rule-making proceeding on its own initiative or may in its sole discretion act upon the petition of any person including individual milk producers, any organization of milk producers or handlers, general farm organizations, consumer or public interest groups, and local, state or federal officials.

§ 12. Findings and referendum.

(a) In addition to the concise general statement of basis and purpose required by section 4(b) of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 53 (c)), the Commission shall make findings of fact with respect to:

(1) Whether the public interest will be served by the establishment of minimum milk prices to dairy farmers under Article IV.

(2) What level of prices will assure that producers receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) Whether the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) Whether the terms of the proposed regional order or amendment are approved by producers as provided in Section 13.

§ 13. Producer referendum.

(a) For the purpose of ascertaining whether the issuance or amendment of regulations establishing a compact over-order price or a commission marketing order, including any provision with respect to milk supply under subsection (f) of Section 9, is approved by producers, the Commission shall conduct a referendum among producers. The referendum shall be held in a timely manner, as determined by regulation of the Commission. The terms and conditions of the proposed order or amendment shall be described by the Commission in the ballot used in the conduct of the referendum, but the nature, content, or extent of such description shall not be a basis for attacking the legality of the order or any action relating thereto.

(b) An order or amendment shall be deemed approved by producers if the Commission determines that it is approved by at least two-thirds of the voting producers who, during a representative period determined by the Commission, have been engaged in the production of milk the price of which would be regulated under the proposed order or amendment.

(c) For purposes of any referendum, the Commission shall consider the approval or disapproval by any cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of such commodity, as the approval or disapproval of the producers who are members or stockholders in, or under contract with, such cooperative association of producers, except as provided in subdivision (1) of this subsection and subject to the provisions of subdivisions (2) through (5) of this subsection.

(1) No cooperative that has been formed to act as a common marketing agency for both cooperatives and individual producers shall be qualified to block vote for either.

(2) Any cooperative that is qualified to block vote shall, before submitting its approval or disapproval in any referendum, give prior written notice to each of its members as to whether and how it intends to cast its vote. The notice shall be given in a timely manner as established, and in the form prescribed, by the Commission.

(3) Any producer may obtain a ballot from the Commission in order to register approval or disapproval of the proposed order.

(4) A producer who is a member of a cooperative which has provided notice of its intent to approve or not to approve a proposed order, and who obtains a ballot and with such ballot expresses his or her approval or disapproval of the proposed order, shall notify the Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote.

(5) In order to ensure that all milk producers are informed regarding a proposed order, the Commission shall notify all milk producers that an order is being considered and that each producer may register his or her approval or disapproval with the Commission either directly or through his or her cooperative.

§ 14. Termination of over-order price or marketing order.

(a) The Commission shall terminate any regulations establishing an over-order price or commission marketing order issued under this Article whenever it finds that such order or price obstructs or does not tend to effectuate the declared policy of this compact.

(b) The Commission shall terminate any regulations establishing an over-order price or a commission marketing order issued under this Article whenever it finds that such termination is favored by a majority of the producers who, during a representative period determined by the Commission, have been engaged in the production of milk, the price of which is regulated by such order; but such termination shall be effective only if announced on or before such date as may be specified in such marketing agreement or order.

(c) The termination or suspension of any order or provision thereof, shall not be considered an order within the meaning of this Article and shall require no hearing, but shall comply with the requirements for informal rule making prescribed by Section 4 of the Federal Administrative Procedure Act, as amended (5 U.S.C. § 553).

ARTICLE VI. Enforcement

§ 15. Records, reports, access to premises.

(a) The Commission may by rule and regulation prescribe record keeping and reporting requirements for all regulated persons. For purposes of the administration and enforcement of this compact, the Commission may examine the books and records of any regulated person relating to his or her milk business and for that purpose, the Commission's properly designated officers, employees, or agents shall have full access during normal business hours to the premises and records of all regulated persons.

(b) Information furnished to or acquired by the Commission officers, employees, or its agents pursuant to this section shall be confidential and not subject to disclosure except to the extent that the Commission deems disclosure to be necessary in any administrative or judicial proceeding involving the administration or enforcement of this compact, an over-order price, a compact marketing order, or other regulations of the Commission. The Commission may adopt rules further defining the confidentiality of information pursuant to this section. Nothing in this section shall be deemed to prohibit (i) the issuance of general statements based upon the reports of a number of handlers, which do not identify the information furnished by any person, or (ii) the publication by direction of the Commission of the name of any person violating any regulation of the Commission, together with a statement of the particular provisions violated by such person.

(c) No officer, employee, or agent of the Commission shall intentionally disclose information, by inference or otherwise, that is made confidential pursuant to this section. Any person violating the provisions of this section shall, upon conviction, be subject to a fine of not more than one thousand dollars ($1,000) or to imprisonment for not more than one year, or both, and shall be removed from office. The Commission shall refer any allegation of a violation of this section to the appropriate state enforcement authority or United States Attorney.

§ 16. Subpoena, hearings, and judicial review.

(a) The Commission is hereby authorized and empowered by its members and its properly designated officers to administer oaths and issue subpoenas throughout all signatory states to compel the attendance of witnesses and the giving of testimony and the production of other evidence.

(b) Any handler subject to an order may file a written petition with the Commission stating that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. The handler shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Commission. After such hearing, the Commission shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(c) The district courts of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, are hereby vested with jurisdiction to review such ruling, provided a complaint for that purpose is filed within 30 days from the date of the entry of the ruling. Service of process in these proceedings may be had upon the Commission by delivering to it a copy of the complaint. If the court determines that the ruling is not in accordance with law, it shall remand such proceedings to the Commission with directions either (i) to make such ruling as the court shall determine to be in accordance with law, or (ii) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subdivision shall not impede, hinder, or delay the Commission form obtaining relief pursuant to Section 17. Any proceedings brought pursuant to Section 17, except where brought by way of counterclaim in proceedings instituted pursuant to this section, shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this section.

§ 17. Enforcement with respect to handlers.

(a) Any violation by a handler of the provisions of regulation establishing an over-order price or a commission marketing order, or other regulations adopted pursuant to this compact shall:

(1) Constitute a violation of the laws of each of the signatory states. Such violation shall render the violator subject to a civil penalty in an amount as may be prescribed by the laws of each of the participating states, recoverable in any state or federal court of competent jurisdiction. Each day such violation continues shall constitute a separate violation.

(2) Constitute grounds for the revocation of license or permit to engage in the milk business under the applicable laws of the participating states.

(b) With respect to handlers, the Commission shall enforce the provisions of this compact, regulations establishing an over-order price, a commission marketing order or other regulations adopted hereunder by:

(1) Commencing an action for legal or equitable relief brought in the name of the Commission in any state or federal court of competent jurisdiction; or

(2) Referral to the state agency for enforcement by judicial or administrative remedy with the agreement of the appropriate state agency of a participating state.

(c) With respect to handlers, the Commission may bring an action for injunction to enforce the provisions of this compact or the order or regulations adopted thereunder without being compelled to allege or prove that an adequate remedy of law does not exist.

ARTICLE VII. Finance

§ 18. Finance of start-up and regular costs.

(a) To provide for its start-up costs, the Commission may borrow money pursuant to its general power under Section 6, subdivision (d), paragraph 4. In order to finance the cost of administration and enforcement of this compact, including payback of start-up costs, the Commission may collect an assessment from each handler who purchases milk from producers within the region. If imposed, this assessment shall collected on a monthly basis for up to one year from the date the Commission convenes, in an amount not to exceed $.015 per hundred weight of milk purchased from producers during the period of the assessment. The initial assessment may apply to the projected purchases of handlers for the two-month period following the date the Commission convenes. In marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the Commission's ongoing operating expenses.

(b) The Commission shall not pledge the credit of any participating state or of the United States. Notes issued by the Commission and all other financial obligations incurred by it, shall be its sole responsibility and no participating state or the United States shall be liable therefor.

§ 19. Audit and accounts.

(a) The Commission shall keep accurate accounts of all receipts and disbursements, which shall be subject to the audit and accounting procedures established under its rules. In addition, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(b) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the participating states and by any persons authorized by the Commission.

(c) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any participating state or of the United States.

ARTICLE VIII. Entry into Force; Additional Members and Withdrawal

§ 20. Entry into force; additional members.

The compact shall enter into force effective when enacted into law by any three states of the group of states composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia and when the consent of Congress has been obtained.

§ 21. Withdrawal from compact.

Any participating state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after notice in writing of the withdrawal is given to the Commission and the governors of all the participating states. No withdrawal shall affect any liability already already incurred by or chargeable to a participating state prior to the time of such withdrawal.

§ 22. Severability.

If any part or provision of this compact is adjudged invalid by any court, such judgment shall be confined in its operation to the part or provision directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this compact. In the event Congress consents to this compact subject to conditions, said conditions shall not impair the validity of this compact when said conditions are accepted by three or more compacting states. A compact state may accept the conditions of Congress by implementation of this compact. (1997-494, s. 1.)

Editor's Note. — Session Laws 1997-494, s. 2, makes this Article effective September 11, 1997.

§ 106-811. Appointment of members to the Southern Dairy Compact Commission.

(a) The delegation from the State of North Carolina to the Southern Dairy Compact Commission, as established in Article IV of the Compact, shall be composed of five members appointed as follows:

(1) One member representing consumers of milk, appointed by the Governor.
(2) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.
(3) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.
(4) Two members appointed by the Commissioner of Agriculture, one of whom shall be a dairy farmer engaged in the production of milk at the time of appointment or reappointment.

(b) Members must be registered to vote in the State.

(c) Members shall serve a term of four years and may be reappointed, but no member shall serve more than three consecutive terms. Members shall serve until their successors are duly appointed. Any appointment to fill an unexpired term shall be for the balance of the unexpired term and shall be made by the appropriate appointing authority. A member may be removed by the appointing authority, in accordance with G.S. 143B-13. The Commissioner of Agriculture shall designate one member of the delegation to serve as chair, at the pleasure of the Commissioner.

(d) Members of the delegation shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5.

(e) A majority of the delegation shall constitute a quorum for the transaction of business.

(f) All clerical and other services required by the delegation shall be provided by the Commissioner of Agriculture. (1997-494, s. 1.)

Chapter 108A.

Editor's Note. — The legislation and annotations affecting Chapter 108A have been included in a recently published replacement chapter.

Chapter 108B.

Community Action Programs.

Article 2.

Community Action Partnership Act.

Sec.
108B-23. Designation of administering agency powers and responsibilities.

ARTICLE 2.

Community Action Partnership Act.

§ 108B-23. Designation of administering agency powers and responsibilities.

(a) For purposes of this Article, "Department" means the Department of Health and Human Services and "Secretary" means the Secretary of Health and Human Services.

(b) The Department is directed to carry out the purposes and provisions of this Article. In carrying out this directive, the Secretary shall promulgate rules consistent with the purposes and provisions of this Article. (1983 (Reg. Sess., 1984), c. 1034, s. 111.1; 1989, c. 727, s. 48; c. 751, ss. 7(9), 8(11a); 1989 (Reg. Sess., 1990), c. 1004, ss. 34(c), 35; 1997-443, s. 11A.118(a).)

Editor's Note. —

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

Chapter 110.

Editor's Note. — The legislation and annotations affecting Chapter 110 have been included in a recently published replacement chapter.

Chapter 111.

Aid to the Blind.

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Sec.
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ARTICLE 1.

General Duties of Department of Health and Human Services.

§ 111-4. Register of State's blind.

It shall be the duty of the Department of Health and Human Services to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the Department of Health and Human Services to be of value. (1935, c. 53, s. 3; 1973, c. 476, s. 143; 1975, c. 19, s. 35; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-5. Information and aid bureaus.

The Department of Health and Human Services shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the Department of Health and Human Services in disposing of the products of their home industry. (1935, c. 53, s. 4; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.

The Department of Health and Human Services may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may cooperate with shops already established. The Department may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the Department such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the Department, outside of the State. The Department may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the Department under the provisions of this Chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of G.S. 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-6.1. Rehabilitation center for the adult blind.

In addition to other powers and duties granted it by law, the Department of Health and Human Services is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and the Department is hereby authorized to enter into any agreement or contract; to purchase or lease property, both real and personal, accept grants and gifts of whatever nature, and to do all other things necessary to carry out the intent and purposes of such a rehabilitation center.

The Department of Health and Human Services is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190). Visually handicapped persons as defined in G.S. 111-11, who are physically present in North Carolina may enjoy the benefits of this section or any other related rehabilitation benefits under the Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4; 1971, c. 1215, s. 2; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-7. Promotion visits.

The Department of Health and Human Services may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Department of Health and Human Services may deem advisable. (1935, c. 53, s. 6; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, twice substituted "Health and Human Services" for "Human Resources."

§ 111-8. Investigations; eye examination and treatment.

It shall be the duty of this [the] Department of Health and Human Services to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and cooperate in any such measure for the State of North Carolina as may seem wise. The Department of Health and Human Services may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified opthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-8.1. Certain eye examinations to be reported to Department of Health and Human Services.

Whenever, upon examination at a clinic, hospital, or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person who conducted or was in charge of the examination shall within 30 days report the results of the examination to the Department of Health and Human Services. (1945, c. 72, s. 3; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-12.1. Acceptance of private contributions for particular facilities authorized.

In addition to other powers and duties granted it by law, the Department of Health and Human Services is hereby authorized to accept contributions of funds made by any private individual, agency or organization even though a condition of the contribution may be that the funds be utilized for the establishment of a particular public or private nonprofit workshop, rehabilitation center or other facility established for the purpose of providing training or employment for eligible blind persons. (1965, c. 906, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-12.2. Contributions treated as State funds to match federal funds.

The Department of Health and Human Services is further authorized to treat any funds received in accordance with G.S. 111-12.1 as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the establishment of such facilities. (1965, c. 906, s. 2; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-12.3. Rules and regulations as to receiving and expending contributions.

The Department of Health and Human Services shall make all rules and regulations necessary for the purpose of receiving and expending any funds mentioned in G.S. 111-12.1 to 111-12.3 which are consistent with the principle of obtaining maximum federal participation and in accordance with established budget procedures of the North Carolina Department of Administration. (1965, c. 906, s. 3; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-12.5. Reserve and operating capital fund.

Funds now held by the Bureau of Employment of the North Carolina State Commission for the Blind or its successor organization not exceeding one hundred thousand dollars ($100,000) shall be retained by the Department of Health and Human Services as a reserve and operating capital fund to be expended by the Department of Health and Human Services for its lawful purposes and objectives in accordance with this Chapter. (1967, c. 1214; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-12.6. Disposition of funds deposited with or transferred to State Treasurer.

All funds required under this Article to be deposited with or which have been heretofore transferred to the State Treasurer by the Bureau of Employment of the Department of Health and Human Services, and all future net earnings and accumulations of said Bureau or its successor, other than the one hundred thousand dollars ($100,000) reserve fund herein provided for, from whatever source or sources shall be periodically, but not less frequently than annually, paid over to and retained by the State Treasurer as a separate fund or account. The funds deposited with the State

Treasurer shall be invested and the income from corpus shall inure to the sole benefit of the Department of Health and Human Services. The income and corpus shall be expended for services to and for the benefit of visually handicapped persons in North Carolina upon recommendation of the Commission for the Blind, by and with the approval of the Governor as the Director of the Budget. (1967, c. 1214; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, twice substituted "Health and Human Services" for "Human Resources."

ARTICLE 2.

Aid to the Needy Blind.

§ 111-13. Administration of assistance; objective standards for personnel; rules and regulations.

The Department of Health and Human Services shall be charged with the supervision of the administration of assistance to the needy blind under this Article, and said Department shall establish objective standards for personnel to be qualified for employment in the administration of this Article, and said Commission for the Blind shall make all rules and regulations as may be necessary for carrying out the provisions of this Article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this Article. (1937, c. 124, s. 2; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-14. Application for benefits under Article; investigation and award by county commissioners.

Any person claiming benefit under this Article, shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the Department of Health and Human Services, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the Department of Health and Human Services, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an opthalmologist designated by the Department of Health and Human Services. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the Commission for the Blind, not inconsistent with this Article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" three times.

§ 111-16. Application for aid; notice of award; review.

Promptly after an application for aid is made to the board of county commissioners under this Article the Department of Health and Human Services shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the Department of Health and Human Services and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within 30 days after the receipt of such notice the board of county commissioners shall transmit to the Department of Health and Human Services copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this Article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission for the Blind, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive director of the Department of Health and Human Services, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases where an appeal shall have been taken by the applicant, the Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action; and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina Department of Health and Human Services shall make any determination increasing or decreasing the award allowing or disallowing the same, not inconsistent with the rules and regulations promulgated by the Commission for the Blind, the applicant or board of county commissioners shall have the right, within 10 days from notice thereof, to have such order reviewed by the Commission for the Blind. The procedure in such cases shall be as provided in the section on appeals to the Commission by the applicant. (1937, c. 124, s. 5; 1971, c. 603, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-17. Amount and payment of assistance; source of funds.

When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this Article, as provided in G.S. 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the Commission for the Blind, to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July 1, 1937, and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the Department of Health and Human Services, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this Article and the total amount of such county's part thereof required to be paid by such county. Each county shall make appropriations for the purposes of this Article in an amount sufficient to cover its share of aid to the blind and may fund them by levy of property taxes pursuant to G.S. 153A-149 and by the allocation of other revenues whose use is not otherwise restricted by law. This provision is mandatory on each county in the State. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the Department of Health and Human Services until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six percent (6%), and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer their share of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July 1, 1937. The State Treasurer shall deposit said funds and credit same to the account of the Department of Health and Human Services to be employed in carrying out the provisions of this Article.

Within the limitations of the State appropriation, the maximum payment for aid to the blind is to be such as will make possible maximum matching funds by the federal government. (1937, c. 124, s. 6; 1961, c. 666, s. 3; 1973, c. 476, s. 143; c. 803, s. 11; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-18. Payment of awards.

After an award to a blind person has been made by the board of county commissioners, and approved by the Department of Health and Human Services the Department of Health and Human Services shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the Department of Health and Human Services shall determine. Such payment shall be drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the Secretary of Health and Human Services, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure.

It is intended that awards paid to recipients under this Article be for the purpose of assisting in defraying the recipient's day-to-day living expenses. To better achieve this purpose it is hereby provided that no moneys belonging to a recipient of aid to the blind under this Article identifiable as moneys paid pursuant to an aid to the blind award shall be subject to levy under execution, attachment or garnishment. (1937, c. 124, s. 7; 1971, c. 177; c. 603, s. 2; 1973, c. 476, s. 143; 1993, c. 257, s. 8; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" three times.

§ 111-20. Awards subject to reopening upon change in condition.

All awards to needy blind persons made under the provisions of this Article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The Department of Health and Human Services and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations annually, or more often, as may be found necessary. The Department of Health and Human Services may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this Article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the Department of Health and Human Services, and shall be subject to the right of appeal and review, as provided in G.S. 111-16. (1937, c. 124, s. 9; 1971, c. 160; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-21. Disqualifications for relief.

No aid to needy blind persons shall be given under the provisions of this Article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing Work First Family Assistance and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2; 1997-443, s. 12.29.)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Work First Family Assistance" for "aid for dependent children."

§ 111-23. Misrepresentation or fraud in obtaining assistance.

Any person who shall obtain, or attempt to obtain, by means of a willful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a Class 2 misdemeanor. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this Article. (1937, c. 124, s. 12; 1993, c. 539, s. 825; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 825, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 111-24. Cooperation with federal departments or agencies; grants from federal government.

The Department of Health and Human Services is hereby empowered, authorized and directed to cooperate with the appropriate federal department or agency charged with the administration of the Social Security Act in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this Article, including the making of such reports in such form and containing such information as the appropriate federal department or agency may from time to time require, and the compliance with such regulations as the appropriate federal department or agency may from time to time find necessary to assure the correctness and verification of such reports.

The Department of Health and Human Services is hereby further empowered and authorized to receive grants-in-aid from the United States government for assistance to the blind and grants made for payment of costs of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the Department of

Health and Human Services in carrying out the provisions of the Article. (1937, c. 124, s. 13; 1971, c. 349, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-25. Acceptance and use of federal aid.

The Department of Health and Human Services may expend under the provisions of the Executive Budget Act, such grants as shall be made to it for paying the cost of administering this Chapter by the appropriate federal department or agency under the Social Security Act. (1937, c. 124, s. 14; 1971, c. 349, s. 2; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-27. Department of Health and Human Services to promote employment of needy blind persons; vending stands on public property.

For the purpose of assisting blind persons to become self-supporting, the Department of Health and Human Services is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said Department may cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of Congress which may be hereafter enacted.

The board of county commissioners of each county and the commissioners or officials in charge of various State and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any State, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the Department of Health and Human Services: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the section catchline and throughout the section.

§ 111-27.1. Department of Health and Human Services authorized to conduct certain business operations.

For the purpose of assisting blind persons to become self-supporting the Department of Health and Human Services is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day-by-day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the Department of Health and Human Services. All of the business operations under this law, however, shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

After September 30, 1983, Randolph-Sheppard vendors will no longer be State employees. Blind licensees operating vending facilities under contract with the North Carolina Department of Health and Human Services, Division of Services for the Blind, are independent contractors. (1945, c. 72, s. 2; 1971, c. 1025, s. 1; 1973, c. 476, s. 143; 1983, c. 867, s. 1; 1993, c. 257, s. 9; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the section catchline and in the first paragraph.

§ 111-27.2. Blind vending-stand operators; retirement benefits.

The Department of Health and Human Services is authorized and empowered to continue and maintain, in its discretion, any existing retirement system providing retirement benefits for blind vending-stand operators and to expend funds to provide necessary contributions to any existing retirement system for blind vending-stand operators to the extent that the Department determines such retirement system to be in the best interest of the blind vending-stand operators. (1969, c. 1255, s. 4; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-28. Department of Health and Human Services authorized to receive federal, etc., grants for benefit of needy blind; use of information concerning blind persons.

The Department of Health and Human Services is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the Department of Health and Human Services, to be used in carrying out the provisions of this law.

The Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in G.S. 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The Department of Health and Human Services is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provisions of such assistance and services and in the study of the problems involved.

The Department of Health and Human Services is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the Department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the Department of Health and Human Services, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the Department of Health and Human Services or the board of county commissioners or the county social services department, or acquired in the course of the performance of official duties.

Notwithstanding the above, the Department of Health and Human Services is authorized to release to the North Carolina Department of Motor Vehicles and the North Carolina Department of Revenue the name and medical records of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information and documents released to the Department of Motor Vehicles and the Department of Revenue shall be treated by those departments as confidential for their use only and shall not be released by them to any person for commercial or political purposes or for any purpose not directly connected with the administration of Chapters 20 and 105 of the General Statutes of this State. The Department of Health and Human Services may also release to the North Carolina Library for the Blind and Physically Handicapped of the Department of Cultural Resources, the name and address of any person listed in the register of the blind in this State maintained under the provisions of G.S. 111-4. All information released to the North Carolina Library for the Blind and Physically Handicapped shall be treated as confidential for its use only and shall not be released to any person for commercial or political purposes or for any purpose not directly connected with providing information concerning services offered by the North Carolina Library for the Blind and Physically Handicapped. (1939, c. 124; 1941, c. 186; 1969, cc. 871, 982; 1973, c. 476, s. 143; 1989, c. 752, s. 141; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1989, c. 752, s. 167 contains a severability clause.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the section catchline and throughout the section.

§ 111-28.1. Department of Health and Human Services authorized to cooperate with federal government in rehabilitation of blind.

The Department of Health and Human Services is hereby authorized and empowered to make the necessary rules and regulations to cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume 57, United States Statutes at Large, Chapter 190) providing for the rehabilitation of the blind. (1945, c. 72, s. 1; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, twice substituted "Health and Human Services" for "Human Resources."

§ 111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports.

In addition to the powers and duties imposed upon the Department of Health and Human Services, the said Department shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

(1) The Department of Health and Human Services is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the State, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in Chapter 124 of the Public Laws of 1937. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the Commission for the Blind, producing as far as possible a just and fair distribution thereof.

(2) The Department of Health and Human Services is hereby authorized to make such grants to the needy blind of the State as will enable said Department to receive the maximum grants from the federal government for such purpose.

(3) The Department of Health and Human Services is hereby authorized to work out plans with the Secretary of State for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The Secretary of State is hereby authorized to lend such reports to the Department of Health and Human Services for relending to needy blind lawyers. Such reports may be recalled at any time by the Secretary of State upon giving 15 days' written notice to the Department of Health and Human Services which shall remain responsible for said reports until they are returned. The Department shall relend such reports only to blind lawyers, who, after an investigation by the Department, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600; 1973, c. 476, s. 143; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" throughout the section.

§ 111-30. Personal representatives for certain recipients of aid to the blind.

If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested person, or by the Secretary of Health and Human Services before the appropriate court under G.S. 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Secretary of Health and Human Services in the selection of a suitable person for appointment as personal representative for the limited purposes of G.S. 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2; 1971, c. 603, s. 3; 1973, c. 476, s. 138; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-31. Courts for purposes of §§ 111-30 to 111-33; records.

For the purposes of G.S. 111-30 to 111-33 the court may be either a domestic relations court established pursuant to Article 13, Chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of G.S. 111-30 to 111-33, direct the Secretary of Health and Human Services to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2; 1971, c. 603, s. 4; 1973, c. 476, s. 138; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 3.

Operation of Vending Facilities on State Property.

§ 111-41. Preference to visually handicapped persons in operation of vending facilities; responsibility of Department of Health and Human Services.

In order to promote the employment and the self-sufficiency of visually handicapped persons in North Carolina, State agencies shall upon the request of the Department of Health and Human Services give preference to visually handicapped persons in the operation of vending facilities on State property. The Department of Health and Human Services shall encourage and assist the operation of vending facilities by visually handicapped persons. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources" in the section catchline and in each sentence.

§ 111-43. Installation of coin-operated vending machines.

In locations where the Department determines that a vending facility may not be operated or should not continue to operate due to insufficient revenues to support a blind vendor or due to the lack of qualified blind applicants, the Department shall have the first opportunity to secure, by negotiation of a contract with one or more licensed commercial vendors, coin-operated vending machines for the location. Profits from coin-operated vending machines secured by the Department shall be used by the Department for the support of programs that enable blind people to live more independently, including medical, rehabilitation, independent living, and educational services offered by the Division of Services for the Blind. (1973, c. 1280, s. 1; 1991, c. 689, s. 221.4(a); 1991 (Reg. Sess., 1992), c. 984, s. 1.)

Editor's Note. — Session Laws 1991, c. 689, s. 221.4(b) provided that the amendment to this section by s. 221.4(a) would expire June 30, 1992.

Session Laws 1991 (Reg. Sess., 1992), c. 984, s. 1, effective July 20, 1992, deleted the phrase "except for up to $300,000 of the highway vending profits each fiscal year that may be used to support the Medical Eye Care Program and to provide needed technological equipment and related activities within the Division" in the second sentence of this section. This language had apparently expired effective June 30, 1992, pursuant to Session Laws 1991, c. 689, s. 221.4(b).

Session Laws 1991, c. 689, s. 353 is a severability clause.

§ 111-44. Location and services provided by State agency.

If the Department of Health and Human Services shall determine that a location is suitable for the operation of a vending facility by a visually handicapped person, the State agency with authority over the location shall provide proper space, plumbing, lighting, and electrical outlets for the vending facility in the original planning and construction, or in alteration and renovation of present location. The State agency shall provide necessary utilities, janitorial services and garbage disposal for the operation of the vending facility. Space for the vending facilities and service therefor shall be provided without charge. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-46. Vending facilities operated by those other than visually handicapped persons.

Where vending facilities on State property are operated by those other than the visually handicapped persons on the date of enactment of this Article, the contract of these vending facilities shall not be renewed or extended unless the Secretary of the Department of Health and Human Services is notified thereof and he determines within 30 days of such notification that the vending facilities are not, or cannot become, suited for operation by the visually handicapped. However, if the Secretary of the Department of Health and Human Services within 30 days of the date of such notification fails to provide for the operation of the vending facilities by the visually handicapped, the existing contract may be renewed or extended. (1973, c. 1280, s. 1; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-47. Exclusions.

(a) This Article is not intended to cover food services provided by hospitals or residential institutions as a direct service to patients, inmates, trainees, or otherwise institutionalized persons, nor to cover coin-operated vending machines located in State facilities operated under the authority of G.S. 122C.

(b) This Article shall not prohibit the continued use of coin-operated vending machines currently the property of the Division of Services for the Blind of the Department of Health and Human Services and now part of the vending-stand program. (1973, c. 1280, s. 1; 1991 (Reg. Sess., 1992), c. 984, s. 2; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

ARTICLE 4.

Operation of Highway Vending Facilities on North Carolina Highways.

§ 111-48. Preference to blind persons in operation of highway vending facilities.

In order to provide support for programs for the blind and to further promote employment opportunities for blind persons, the Department of Health and Human Services may operate automatic vending machines on State property on North Carolina highways and shall give preference to blind persons in the operation of these facilities. (1991 (Reg. Sess., 1992), c. 984, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1991 (Reg. Sess., 1992), c. 984, s. 4 made this article effective upon ratification. The act was ratified July 20, 1992.

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-49. Definitions as used in this Article.

(a) "Automatic vending" means a coin, currency, token, ticket, or credit card operated machine that dispenses food, drinks, or sundries.

(b) "Blind vendor" means a blind person, as specified in G.S. 105-249(b), who has been licensed by the Division of Services for the Blind to operate a vending stand in a public building.

(c) "Highway vending facilities" means automatic vending operations located on North Carolina highways in Welcome Centers and rest areas designated by the State. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

§ 111-50. Operations of highway vending.

(a) In locations on North Carolina highways where the Department of Health and Human Services determines that automatic vending is suitable, the Department shall authorize the Division of Services for the Blind to contract with blind vendors in the operation of highway vending facilities. The contracts shall be reviewed and renegotiated by the Division every two years and shall be reviewed by the Transfer and Promotion Committee. The Commission for the Blind shall adopt rules necessary to govern the operations. The highway vending program shall be a part of the Business Enterprises Program operated under the Randolph-Sheppard Act, 20 U.S.C. § 107a.

(b) Profits returned to the Division shall be based upon operator net income and determined as follows:

(1) The Division shall charge seventeen percent (17%) set-aside on operator net income up to two and one-half times the average operator income for the previous State fiscal year.

(2) The Division shall charge fifty percent (50%) set-aside on operator net income between two and one-half and three and one-half times the average operator income for the previous State fiscal year.

(3) The Division shall charge sixty-five percent (65%) set-aside on all operator net income over three and one-half times the average operator income for the previous State fiscal year. (1991 (Reg. Sess., 1992), c. 984, s. 3; 1997-443, s. 11A.118(a).)

Editor's Note. — Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997.'"

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 111-51. Priority for specific blind vendors.

Blind vendors who were operating highway vending facilities as of July 31, 1991, and who continue to operate those facilities shall be given priority in renegotiating contracts under this Article to continue to operate those same facilities. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

§ 111-52. Profits from Highway Vending Fund.

Profits generated by highway vending locations as of June 30, 1992, and deposited in a special fund in accordance with the Administrative Policies and Procedures Manual of the Office of the

State Controller shall be reserved for the construction and maintenance of highway vending facility projects. (1991 (Reg. Sess., 1992), c. 984, s. 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

December 1, 1997

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1997 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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